THE
Justice of the Peace
AND
PARISH OFFICER;
WITH THE PRACTICE OF
COUNTRY ATTORNIES
IN CRIMINAL CASES,

COMPRISING THE WHOLE OF THE LAW RESPECTING

INDICTABLE OFFENCES,

WITH FORMS,

AND A TABULAR ARRANGEMENT OF OFFENCES AND THEIR PUNISHMENT, &c.

IN FOUR VOLUMES.

VOL. IV.

Fifth Edition.



BY

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PREFACE.

When I prepared the recent edition of the first two volumes of this work for publication, I avoided including in them any notice of Indictable Offences, fearing that the consolidation of the Criminal Law, which session after session, for many years, was announced as being contemplated and in progress, should take place, and render my labours in that respect abortive. I am now, however, entirely relieved from anxiety upon that account. The consolidation is referred to Commissioners; the subject is attended with many difficulties, and is not likely to be ready for legislation for some years. The former Commissioners, to whom the matter was referred, occupied some ten or twelve years in the task, and then produced what was termed a Criminal Code, which is found wholly ineffective, and inapplicable to the present state of our Criminal Law. The process of preparing this consolidation

has now to be recommenced, and if it be completed in some three or four years, we may consider ourselves fortunate. In the mean time, I see no reason for leaving my "Justice of the Peace" incomplete, for want of that portion of the former editions which related to Indictable Offences, their definition, description, and punishment. These I have comprised in the present volume, arranged alphabetically, as usual, with Forms of Commitments for the several offences respectively, so as to relieve the Magistrates and their Clerks from all trouble. After each offence, I have referred to the page in my new work on Criminal Law,* where the reader will find the Form of the Indictment for it, and the evidence necessary to support it. This will be found a valuable assistant; for the Magistrate will there find the evidence which will be required at the Assizes or Sessions to insure a conviction, all which he should take care to comprise in the examinations and depositions, and, as nearly as

* Cited as "*Arch. New Cr. L.*" The actual title of the work is, "The New System of Criminal Procedure, Pleading, and Evidence, in Indictable Cases, as founded on Lord Campbell's Act, 14 & 15 Vict. c. 100, and other recent Statutes, with new Forms of Indictments and Evidence." It is published by Messrs. Shaw and Sons.

possible, in the order indicated in the work referred to.

I have added to the work a Tabular Abstract of its contents, as in the first and second volume of the work, and which in those volumes is so much prized, and has given such general satisfaction. I have added a new Table of Contents, Table of Cases, Table of Statutes, and a correct and very elaborate Index; and I have taken infinite pains that the whole volume shall be found correct.

J. F. A.

9, *King's Bench Walk, Temple,*
1855.

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THE JUSTICE OF THE PEACE

AND

PARISH OFFICER.

The ministerial duties of a Justice of the Peace are sufficiently defined by law. The offences for which he may commit the offender for trial, and the forms of the commitments, shall be here treated of, under the following heads :—

ABDUCTION.

Forcible abduction from motives of lucre, 1. | *Abduction of a girl under sixteen years of age*, 2.

Forcible abduction from motives of lucre.] "Where any woman shall have any interest, whether legal or equitable, present or future, absolute, conditional, or contingent, in any real or personal estate, or shall be an heiress presumptive or next of kin to any one having such interest, if any person shall, from motives of lucre, take away or detain such woman against her will, with intent to marry or defile her, or to cause her to be married or defiled by any other person : every such offender, and every other person counselling, aiding or abetting such offender, shall be guilty of felony :" transportation for life or for not less than seven years, or imprisonment with or without hard labour for not more than four years (*a*).

Commitment :—*For that he the said A. B., on —— at ——, feloniously did, from motives of lucre, take away and detain one C. D., against her will, she the said C. D. being then [a woman having an interest in certain real* or *personal property,* or *the heiress presumptive to a person having*

(*a*) 9 G. 4, c. 31, s. 19.

an interest in certain real property, or *the next of kin to a person having an interest in certain personal property*], *with intent her the said C. D.* [*to marry* or *defile*, or *to cause to be married to* or *defiled by some other person unknown*]: *against the form of the statute in such case made and provided. And you the said keeper*, &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 301.

Abduction of a girl under sixteen years of age.] Unlawfully taking, or causing to be taken, "any unmarried girl, being under the age of sixteen years, out of the possession and against the will of her father or mother, or of any other person having the lawful care or charge of her:" misdemeanor; fine or imprisonment, or both (*b*). And where the consent of the parents was obtained by misrepresentation and fraud, the party having at the time an intent to debauch the girl, Gurney, B., held it to be a case within the act (*c*). In one case, Parke, B., ruled that a mere decoying or enticing a girl to go away voluntarily, though by fraudulent pretences, would not amount to the offence contemplated by the statute (*d*). But in a subsequent case, where it appeared that the girl actually proposed to the man to elope with him, and he, in pursuance of it, went to her father's house at night, placed a ladder against a window, and held it whilst she descended, and both of them then eloped: Atcherley, Serj., held this to be a case within this section; and Tindal, C. J., to whom he afterwards mentioned it, was of the same opinion (*e*). And in a recent case, where it appeared that the prisoner persuaded a young girl, between twelve and thirteen years of age, to leave her father's house and go with him to America, and for this purpose she was to meet him at a particular place on the road to London; she met him accordingly, having her clothes with her, which he put into one of his boxes, and they both went by a waggon to London, he paying her fare; but upon their arrival in London the prisoner was apprehended: at his trial, the question whether this was a "taking" of the girl, within the meaning of the statute, was reserved for the opinion of the Criminal Appeal Court, who held that it was; the girl must be deemed to have been in the possession of her father until she met the prisoner at the appointed place, and what then happened was a taking of the girl out of the possession of her father, within the meaning of the Act (*f*). The statute

(*b*) 9 G. 4, c. 31, s. 20.

(*c*) *R.* v. *Hopkins*, Car. & M. 254.

(*d*) *R.* v. *Meadows*, 1 Car. & K. 399.

(*e*) *R.* v. *Robins*, 1 Car. & K. 456.

(*f*) *R.* v. *Manktelow*, 22 Law J. 115, m.

3 H. 7, c. 2, and 4 & 5 Ph. & M. c. 8, upon the subject of abduction, have been repealed by 9 G. 4, c. 31, s. 1.

Commitment:—*For that he the said A. B., on —— at ——, unlawfully did take one C. D. out of the possession and against the will of one J. D. her father* [or as the case may be], *she the said C. D. then being an unmarried girl, under the age of sixteen years, to wit, of the age of —— years: against the form of the statute in such case made and provided. And you the said keeper*, &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 302.

ABORTION.

"Whosoever, with intent to procure the miscarriage of any woman, shall unlawfully administer to her, or cause to be taken by her, any poison or other noxious thing;—or shall unlawfully use any instrument or other means whatsoever, with the like intent:"—felony, transportation for life, or for not less than fifteen years, or imprisonment [with or without hard labour (*a*)] for not more than three years (*b*). The stat. 9 G. 4, c. 31, s. 13, upon this subject, is repealed: and the distinction there made between women quick with child, and those pregnant but not quick with child, is now abolished. It is immaterial, whether this be done with the consent of the woman or not; or whether in fact she be pregnant at all at the time, or not (*c*), although this was formerly otherwise (*d*). Formerly, where the woman was not quick with child, it was immaterial what was administered, provided it was administered with intent to procure miscarriage (*e*); but now the article administered must be proved to be either poison or "other noxious thing." To be administered, also, it seems that the poison or other thing must be actually taken into the stomach of the woman (*f*); but an attempt to administer it would probably be deemed a misdemeanor.

Commitment for administering drugs: *on —— at —— did unlawfully and feloniously administer to one C. D., and did then and there cause to be taken by her, one ounce weight of a certain poison* [or *noxious thing*] *called ——, with intent in so doing then and there to procure the miscarriage of the*

(*a*) 1 Vict. c. 85, s. 7.
(*b*) Id. s. 6.
(*c*) *R.* v. *Goodchild*, 2 Car. & K. 293.
(*d*) *R.* v. *Scudder*, Ry. & M. 216.
(*e*) *R.* v. *Coe*, 6 Car. & P. 403.
(*f*) See *R.* v. *Cadman*, Ry. & M. 114. *R.* v. *Harley*, 4 Car. & P. 369, per Park, J.

said C. D.: against the form of the statute in such case made and provided. And you the said keeper, &c.

See the form of an indictment for this offence, and the evidence to support it, *Arch. New Cr. Law*, 295.

Commitment for using instruments, &c. :—*on* —— *at* —— *did* [*use a certain instrument called a* ——, stating how, or if other means have been used, state them,] *with intent*, &c. as above.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 296.

ABUSING A GIRL.

See "*Carnally knowing a Girl.*"

ACCESSORY AND PRINCIPAL.

Principal.] He who actually commits the offence, is said to be principal in the first degree; he who is present, aiding and abetting him in doing it, is said to be principal in the second degree (*a*). Both however are equally guilty. And so immaterial is the distinction considered, in practice, that if a man be indicted as principal in the first degree, proof that he was present aiding and abetting another in committing the offence, although his was not the hand that actually did it, will support the indictment (*b*); and on the other hand, if he be indicted as principal in the second degree, proof that he was not only present, but committed the offence with his own hand, will support the indictment. And persons present at the commission of an offence, are said to be aiding and abetting the party actually committing it, if they be confederated or engaged with him in a common design, of which the offence is a part (*c*), or if by their presence they encourage him in the commission of it (*d*). So, a person is said to be

(*a*) See *R.* v. *Boyce*, 4 Burr. 2073.
(*b*) See *R.* v. *Crisham*, Car. & M. 187.
(*c*) *R.* v. *Tattersall*, 1 Russ. 22. *R.* v. *Standley*, R. & Ry. 305. *R.* v. *Bowen*, Car. & M. 149; and see *R.* v. *Hornby et al.*, 1 Car. & K. 305, cor. Coltman, J.
(*d*) *R.* v. *Murphy*, 6 Car. & P. 103.

present aiding and abetting, who, being engaged in the same design with the person who actually commits the offence, although not actually present at the commission of it, is yet at such a convenient distance as to be able to come to the immediate assistance of his associate, if required, or to watch to prevent surprise, or the like (*e*). And where a person was waiting outside of a house, to receive goods which his confederate was stealing within, he was holden to be a principal in the theft (*f*). So, persons present, aiding and abetting in a part of the offence, may, if the offence be completed by their confederate, be indicted as principals: and therefore, where two persons with their umbrella, screened a third whilst he was breaking into a dwelling-house in the day time, and then went away, and were not seen near the place whilst the third party was committing a larceny within the house, Gaselee, J., and Gurney, B., held that they were principals as to the whole offence, namely, the breaking and entering the dwelling-house, and stealing therein (*g*).

But if a man be at such a distance from the place where the offence is committed, that he could not assist in it if required, he cannot be deemed a principal; and therefore it was holden, that going towards the place where a larceny was to be committed, for the purpose of assisting in carrying off the property and assisting accordingly, did not make the party a principal in the larceny, where it appeared that he was at such a distance at the time of the felonious taking, that he could not have assisted in it (*h*). So, where persons, having stolen goods from a warehouse, carried them along the street for about thirty yards, and then fetched the prisoner, who was apprised of the robbery, but not at all acting in it, and he assisted in carrying away the property; it was holden that he was not a principal but accessory merely (*i*). So, where several persons were out for the purpose of committing a felony, but, upon an alarm, ran different ways, and one of them, to avoid being taken, wounded a man who was pursuing him: it was holden that the others could not be deemed principals in this offence (*k*). So, where two persons were riding their horses violently along the road, seemingly racing, and the first of them passed a man on horseback without injuring him, but the last rode against him, threw him, and he was killed: Patteson, J., held that the first of the two could not be deemed a principal in the homicide (*l*).

(*e*) See Fost. 350 — 355. *R.* v. *Goggerly and Whitford*, R. & Ry. 343.

(*f*) *R.* v. *Owen*, Ry. & M. 96.

(*g*) *R.* v. *Jordan et al.*, 7 Car. & P. 432.

(*h*) *R.* v. *Kelly*, R. & Ry. 421.

(*i*) *R.* v. *King*, R. & Ry. 332.

(*k*) *R.* v. *White*, R. & Ry. 99.

(*l*) *R.* v. *Martin et al.*, 6 Car. & P. 396.

The commitment of a principal in the second degree, may either be in the ordinary form, as a principal in the first degree; or if the principal in the first degree be committed with him, then after describing the offence of the principal in the first degree, the offence of the abettor may be described in the same warrant, thus: *And that the said C. D. feloniously was then and there present, feloniously aiding, abetting and assisting the said A. B. to do and commit the said felony. And you the said keeper*, &c.

See the form of an indictment against a principal in the second degree, *Arch. New Cr. Law*, 14.

Accessory before the fact.] An accessory before the fact to a felony, is one who counsels, incites, moves, procures, hires or commands another to commit it, but is not himself present aiding or abetting in the commission of it (*m*). There cannot consequently be an accessory before the fact to manslaughter; for that offence, in its nature, cannot be premeditated (*n*). The doctrine as to accessories, also, is confined entirely to felonies; for in treason and misdemeanors, those who, by counsel or incitement, &c., would be accessory before the fact in felony, are deemed principals, and prosecuted and punished accordingly (*o*). But even in felony, if a man incite or procure an innocent agent to do an act which amounts to felony, and for which the agent by law is dispunishable, the person so inciting or procuring the offence to be done, is deemed a principal, and may be indicted and punished as if he himself had done the act (*p*). It is not necessary in order to constitute the offence of accessory, that there should be any direct communication between him and the principal; the procurement may be through the intervention of an agent (*q*). And if managed through an agent, it is not necessary that the principal should be named by the accessory; if the latter desire the agent to procure some person to commit the offence, without naming any, and the agent accordingly procure a person, wholly unknown to the accessory, to commit it, it will be sufficient to constitute the offence of accessory before the fact (*r*). If the principal felon be unknown, the warrant of commitment of the accessory should be accordingly; and if it afterwards turn out that he is known, or even was so at the time, this will not affect the validity of the warrant. But if an indictment against an accessory before the fact, state the

(*m*) *R.* v. *Gordon*, 1 Leach, 515, East, Pl. C. 352; and see *R.* v. *Tuckwell et al.*, Car. & M. 216, Arch. New Cr. Law, 14.

(*n*) 1 Hale, 616.

(*o*) See *R.* v. *Clayton et al.*, 1 Car. & K. 128.

(*p*) Arch. New Cr. Law, 10. *R.* v. *Clifford*, 2 Car. & K. 202.

(*q*) *R.* v. *Cooper*, 5 Car. & P. 534.

(*r*) Id.

principal to be unknown, and it turn out in evidence that he is known, this formerly would be a fatal variance, and the defendant would be acquitted (*s*); but now it should seem that the court would amend the indictment, according to the fact (*t*).

The accessory before the fact may be tried either with the principal or after his conviction, or he may be tried as for a substantive felony, whether the principal have been convicted or be amenable to justice or not (*u*). He is punishable, also, in the same manner as a principal (*x*).

It may be necessary to add, that a man cannot be committed or indicted as accessory before the fact to a felony, unless it be proved that the felony has been actually committed. But soliciting or inciting a person to commit a felony, although the felony be not afterwards in fact committed, is a misdemeanor at common law (*y*), punishable with fine or imprisonment, or both, and the party may be committed and indicted for it.

Commitment with principal:—After describing the offence of the principal, state that of the accessory thus: "*And that the said C. D., before the said felony was so committed as aforesaid, did feloniously* [*and maliciously*] *incite, move, procure, counsel, and command the said A. B. to do and commit the said felony. And you the said keeper,*" &c.

Commitment without the principal:—"*For that one* [or *some person unknown*] *on* —— *at* ——, *did feloniously,*" &c., describing the offence as in a commitment of the principal; "*and that the said C. D., before the said felony was so committed, did feloniously and maliciously incite, move, procure, counsel and command the said* [*A. B.* or *person unknown*] *to do and commit the said felony. And you the said keeper,*" &c.

See the form of an indictment against an accessory before the fact, *Arch. New Cr. Law,* 16.

Accessory after the fact.] After a felony has been committed, if any person receive, harbour, or assist the principal felon, knowing him to have committed the felony, he is deemed an accessory after the fact (*z*). And this extends as well to the offence of manslaughter, as to other felonies (*a*). But it must be considered as having reference to felony only; the same receipt, &c., which in felony will make a man ac-

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(*s*) *R.* v. *Walker*, 3 Camp. 264. See *R.* v. *Bush*, R. & Ry. 372.
(*t*) Arch. New Cr. Law, 15.
(*u*) 7 G. 4, c. 64, s. 9.
(*x*) 11 & 12 Vict. c. 46, s. 1.
(*y*) *R.* v. *Higgins*, 2 East, 5.
(*z*) See Arch. New Cr. Law, 17.
(*a*) *R.* v. *Greenacre*, 8 Car. & P. 35.

cessory after the fact, will, in treason, make the party a principal traitor (*b*), but in misdemeanors is not punishable at all (*c*).

An accessory after the fact to felony, may be tried either in the county where he has been accessory, or in that in which the original felony was committed (*d*). He may be tried either with the principal, or after the principal has been convicted (*e*); or he may be indicted and convicted as for a substantive felony (*f*). The offence is a felony; but is punishable with much less severity than that of the principal or the accessory before the fact. In felonies within stat. 7 & 8 G. 4, c. 29, (the Larceny Act,) accessories after the fact are punishable with imprisonment, with or without hard labour, for any term not exceeding two years, by sect. 61; and the same in felonies, within stat. 7 & 8 G. 4, c. 30, (Malicious injuries,) by sect. 26; in felonies within stat. 9 G. 4, c. 31, (Offences against the person,) by sect. 31; in felonies within stat. 11 G. 4 & 1 W. 4, c. 66, (Forgery,) by sect. 25; and in felonies within stat. 2 W. 4, c. 32, (Coin,) by sect. 18; and in felonies within stat. 9 & 10 Vict. c. 25, (Malicious injuries by explosive substances,) by sect. 10.

Commitment with the principal:—After describing the offence of the principal, state that of the accessory thus:—"*And that the said C. D., well knowing the said A. B. to have committed the felony aforesaid, did afterwards on* ——, *at* ——, *feloniously receive, harbour, and maintain the said A. B. And you the said keeper,*" &c.

Commitment without the principal:—"*For that one A. B.* [or *some person unknown*] *on* ——, *at* ——, *did feloniously,*" &c., describing the offence, as in a commitment of the principal; "*And that the said C. D., well knowing the said A. B. to have committed the felony aforesaid, did afterwards on* ——, *at* ——, *feloniously receive, harbour, and maintain the said A. B. And you the said keeper,*" &c.

See the form of an indictment against an accessory after the fact, *Arch. New Cr. Law*, 18.

(*b*) 1 Hale, 238.
(*c*) Id. 613.
(*d*) 7 G. 4, c. 64, s. 10.
(*e*) Id. s. 11.
(*f*) 11 & 12 Vict. c. 46, s. 2.

ACCUSING OF CRIME.

Letter accusing or threatening to accuse, &c., with intent to extort.] By stat. 10 & 11 Vict. c. 66. s. 1, if any person shall knowingly send, or deliver, or utter to any other person, any letter or writing accusing or threatening to accuse either the person to whom such letter or writing shall be sent or delivered, or any other person, of any crime punishable by law with death or transportation,—or of any assault with intent to commit any rape, or of any attempt or endeavour to commit any rape,—or of any crime in and by stat. 7 & 8 G. 4, c. 29, defined to be an infamous crime (*a*),—with a view or intent to extort or gain, by means of such threatening letter or writing, any property, money, security, or other valuable thing, from any person whatever;—or shall knowingly procure, counsel, aid, or abet the commission of the said offence:—felony; transportation for life, or for not less than seven years, or imprisonment, with or without hard labour, for not more than four years, and, if a male, to be once, twice, or thrice publicly or privately whipped (if the court shall so think fit), in addition to such imprisonment.

To constitute an offence within this statute, there must be an accusation or threat to accuse; and therefore where a man was already indicted for a rape, and another person, not connected with the prosecution, threatened him that if he did not give him 30*l*. he would hire witnesses to prove him guilty: this was holden not to be a threat to accuse, within the meaning of the statute; the accusation had been already made, and this was at most a threat to support it by evidence (*b*). Upon the former statute on this subject, (7 & 8 G. 4, c. 29, s. 8,) it was holden that if the offence consisted of a threat to accuse,

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(*a*) The crimes defined to be infamous by stat. 7 & 8 G. 4, c. 29, s. 9, are "the abominable crime of buggery, committed with mankind or beast,—and every assault with intent to commit the said abominable crime,—and every solicitation, persuasion, promise or threat offered or made to any person whereby to move or induce such person to commit or permit the said abominable crime."

(*b*) *R.* v. *Joseph Gill*, cor. Bayley, J., Sum. Ass. York, 1829.

it must be proved to have been made use of to the party threatened (*b*), or, at least, if made use of to a third person, it must appear that it was so done, with intent that he should mention it to the party threatened (*c*). But it should seem that such a construction would not be given to the present statute. The intent to extort money, &c., may either be expressed, or may be implied from the accusation or threat itself, or from other circumstances. Where the threat was by a letter, sent to the prosecutor by post, it was holden that the offender might be indicted for it in the county where it was delivered to the prosecutor (*d*).

Commitment:—"*On ——, at ——, knowingly and feloniously did send* [or *deliver*] *to the said C. D. a certain letter* [or *writing*] *directed to the said C. D., threatening to accuse* [or *accusing*] *him the said C. D. of having* [*attempted and endeavoured to commit a rape upon Ann, the wife of the said A. B.*," or as the case may be,] "*with a view and intent thereby to extort and gain money*" [property, money, security, or other valuable thing,] "*from the said C. D.: against the form of the statute in such case made and provided. And you the said keeper*," &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Crim. Law*, 325.

Accusing, or threatening to accuse, with intent to extort.] And by the same statute, 10 & 11 Vict. c. 66, s. 2, if any person shall accuse or threaten to accuse either the person to whom such accusation or threat shall be made, or any other person, of any of the crimes hereinbefore specified, with the view or intent in any of the cases last aforesaid to extort or gain from such person so accused or threatened to be accused, or from any other person whatever, any property, money, security, or other valuable thing:—every such offender shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the court, to be transported beyond the seas for life, or for any term not less than seven years, or to be imprisoned, with or without hard labour, for any term not exceeding four years, and, if a male, to be once, twice, or thrice publicly or privately whipped (if the court shall so think fit), in addition to such imprisonment.

Commitment:—*On ——, at ——, feloniously did* [*threaten to*] *accuse one C. D. of having*, &c., as in the last form.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 325.

(*b*) See *R.* v. *Dunkeley et al.*, Ry. & M. 90.

(*c*) See Dict. by the Judges in *R.* v. *Paddle*, R. & Ry. 484.

(*d*) *R.* v. *Esser*, 2 East, P. C. 1125. *R.* v. *Girdwood*, Id. 1120.

Accusing or threatening, and thereby extorting.] "Whosoever shall accuse or threaten to accuse any person of the abominable crime of buggery, committed with mankind or with beast, or of any assault with intent to commit the said abominable crime, or of any attempt or endeavour to commit the said abominable crime, or of making or offering any solicitation, persuasion, promise, or threat, to any person whereby to move or induce such person to commit or permit the said abominable crime,—with a view or intent in any of the cases aforesaid to extort or gain from such person, *and* shall, by intimidating such person by such accusation or threat, extort or gain from such person any property;" felony, transportation for life, or not less than fifteen years, or imprisonment with or without hard labour for not more than three years (*e*). This offence formerly amounted to robbery, and was capital (*f*); but the section of the statute, by which it was declared to be robbery, has been repealed, by stat. 1 Vict. c. 87, s. 1.

Commitment:—"*On——, at——, feloniously did* [*threaten the said C. D. to*] *accuse him the said C. D. of having* [*attempted and endeavoured to commit the abominable crime of buggery with and upon him the said A. B.*, or *with and upon one E. F.*," or as the case may be,] "*with a view and intent then and there to extort and gain property from the said C. D., and that the said A. B., by then and there intimidating the said C. D. by the said accusation* [or *threat*] *as aforesaid, did then and there extort and gain from the said C. D.* [*certain money*," &c., as in larceny], "*the property of him the said C. D.: against the form of the statute in such case made and provided. And you the said keeper*," &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 327.

Obtaining money from a person, within the metropolitan police district, by threatening to complain to a magistrate for any misdemeanor, or as an inducement to forbear making such complaint, subjects the party to a penalty not exceeding 10*l.* (*g*).

Threatening to publish a libel, &c., with intent to extort.] "If any person shall publish or threaten to publish any libel upon any other person,—or shall directly or indirectly threaten to print or publish, or shall directly or indirectly propose to abstain from printing or publishing, or shall directly or in-

(*e*) 1 Vict. c. 87, s. 4.
(*f*) 7 & 8 G. 4, c. 29, s. 7.
(*g*) 3 & 4 Vict. c. 84, s. 11.

directly offer to prevent the printing or publishing, of any matter or thing touching any other person,—with intent to extort any money or security for money or any valuable thing from such or any other person,—or with intent to induce any person to confer or procure for any person any appointment or office of profit or trust:—every such offender, on being convicted thereof, shall be liable to be imprisoned, with or without hard labour, in the common gaol or house of correction, for any term not exceeding three years; provided always, that nothing herein contained shall in any manner alter or affect any law now in force in respect of the sending or delivery of threatening letters or writings (*h*)."

Commitment:—"*On ——, at ——, did threaten one C. D. to publish a certain libel of and concerning him the said C. D., with intent then and thereby to extort money from the said C. D.: against the form of the statute in such case made and provided. And you the said keeper,*" &c.

ADMIRALTY.

Its jurisdiction, 12. *Examination and commitment by justices*, 13.

Its jurisdiction.] The admiral has exclusive jurisdiction of all offences committed on the high seas, and within the harbours, creeks and havens of foreign countries. But within the harbours, creeks and havens of this country, the courts of common law, and not the admiral, have jurisdiction: as for instance, if an imaginary line were drawn across the mouth of such creek, &c., from one point of land to the other,—of all offences committed within such line, the common law would have jurisdiction; but all offences committed without the line would be within the jurisdiction of the admiral. As to the sea shore, below low water-mark, the admiral has exclusive jurisdiction; above high water-mark, the courts of common law have exclusive jurisdiction; and between high and low water-mark, the courts of common law and the admiral have alternate jurisdiction—the courts of common law have jurisdiction of all offences committed on the strand, when the tide is out—the admiral, jurisdiction of offences committed on the water, when the tide is in.

Formerly, if a man upon land fired a loaded pistol or gun at a man upon the seas and killed him, the offence was deemed to be within the admiralty jurisdiction; for the offence was

(*h*) 6 & 7 Vict. c. 96, s. 3.

deemed to have been committed where the death happened, and not at the place from whence the cause of death proceeded (*a*). But now, by stat. 9 G. 4, c. 31, s. 8, "where any person feloniously stricken, poisoned or otherwise hurt upon the sea, or at any place out of England, shall die of such stroke, poisoning or hurt in England, or being feloniously stricken, poisoned or hurt at any place in England, shall die of such stroke, poisoning or hurt upon the sea, or at any place out of England:" the offender, and all accessories before or after the fact, may be tried, &c., in the county or place in England where the death, stroke, poisoning or hurt shall happen, in the same manner as if the offence had been wholly committed in that county or place.

Also, by stat. 3 & 4 W. 4, c. 53, s 77, offences committed on the high seas against any Act relating to the customs, shall, for the purpose of prosecution, be deemed to have been committed on the place on land in the United Kingdom into which the offender shall be carried, or in which he shall be found.

As to offences on land beyond sea,—by stat. 9 G. 4, c. 31, s. 7, if any British subject shall be charged, in England, with "any murder or manslaughter, or with being accessory before the fact to any murder, or after the fact to any murder or manslaughter, the same being respectively committed on land out of the United Kingdom, whether within the king's dominions or without,"—a justice of the peace may take cognizance of the offence so charged, and proceed therein, as if it had been committed within the limits of his ordinary jurisdiction.

Examination and commitment by justices.] In all cases of indictable crimes or offences of any kind or nature whatsoever committed on the high seas, or in any creek, harbour, haven, or other place in which the Admiralty of England have or claim to have jurisdiction, and in all cases of crimes or offences committed on land beyond the seas, for which an indictment may legally be preferred in any place within England or Wales, it shall be lawful for any one or more of Her Majesty's justices of the peace for any county, riding, division, liberty, city, borough, or place within England or Wales, in which any person charged with having committed or with being suspected to have committed any such crime or offence shall reside or be, or shall be supposed or suspected to reside or be, to issue his or their warrant to apprehend the person so charged, and to cause him to be brought before him or them, or some other justice or justices of the peace for the same county, riding, division, liberty, city, borough, or place, to answer to the said charges, and to be further dealt with according to law (*b*). And

(*a*) *R.* v. *Combes*, 1 East, P. C. 369.

(*b*) 11 & 12 Vict. c. 42, s. 2.

such justice may commit the offender to the common gaol of the county, &c., or place wherein he has jurisdiction, to be there safely kept until he shall be thence delivered by due course of law; or he may admit him to bail, as in ordinary cases (*b*).

The examination and commitment are the same as in ordinary cases, except that they allege the offence to have been committed "on the high seas, within the jurisdiction of the Admiralty of England:" or "beyond the seas, at a certain place called ——, in the kingdom of ——." Where, however, a commitment for an offence committed at sea, stated it to have been committed "on the high seas," without also stating that it was committed within the jurisdiction of the Admiralty, it was holden to be sufficient (*c*).

Trial and punishment of offences at sea, &c.] By stat. 28 H. 8, c. 15, all treasons, felonies, robberies, murders, and conspiracies committed on the seas, or in any haven, &c., where the admiral has jurisdiction, shall be tried according to the course of the common law, in such places and counties as shall be appointed by the king's commission. To these offences have since been added stabbing and other attempts to murder or maim, &c., and all other felonies, within stat. 1 Vict. c. 85, by the 10th section of that Act; all offences within the statute against forgery, 11 G. 4 & 1 W. 4, c. 66, by sect. 27; all offences within stat. 2 W. 4, c. 34, relating to counterfeiting the coin and seals, &c., by sect. 20 of that Act; and generally, all other offences committed on the high seas, out of the body of any county of this realm (*d*). The mode of proceeding by commission under stat. 28 H. 8, c. 15, however, was found to occasion considerable delay in the trial of these offences; and therefore the legislature, upon the establishment of the Central Criminal Court, gave that court jurisdiction of all offences "committed or alleged to have been committed on the high seas, and other places within the jurisdiction of the Admiralty of England (*e*);" or he may now be indicted, arraigned, tried and sentenced by any court of oyer and terminer and gaol delivery for the county to the gaol of which he is committed for trial, in like manner as if the offence had been committed within the county, riding or division for which such court shall be holden,—the venue in the margin of the indictment being the said county, but the facts to be alleged to have been committed "on the high seas" (*f*).

What is above mentioned relates to the trial of offences

(*b*) 11 & 12 Vict. c. 42, s. 25.

(*c*) *R.* v. *Jones and Macdonell*, 2 Car. & K. 165.

(*d*) 39 G. 3, c. 37.

(*e*) 4 & 5 W. 4, c. 36, s. 22. See *R.* v. *Wallace*, Car. & M. 200.

(*f*) 7 & 8 Vict. c. 2, ss. 1, 2, 3. See *R.* v. *Serva et al.*, 2 Car. & K. 53.

committed on the high seas, &c., within the jurisdiction of the admiral. But if persons charged in England, as principals or accessories, with murder or manslaughter committed on land out of the United Kingdom, whether within the Queen's dominions or without, be committed for trial or admitted to bail, a commission shall issue, under the great seal, to such persons as the lord chancellor shall appoint, for the purpose of trying them; but it is provided that peers against whom any indictment shall be found before such commissioners shall be tried by their peers, as heretofore used (*g*).

As to the punishment of offences committed at sea,—by stat. 7 & 8 G. 4, c. 28, s. 12, all offences prosecuted in the high court of Admiralty of England, shall, upon every first and subsequent conviction, be subject to the same punishments, whether of death or otherwise, as if such offences had been committed upon the land. And this Act would, I think, be holden to extend to all offences committed at sea, for which the offenders are prosecuted before the Central Criminal Court.

AFFRAY.

At common law.] Lord Coke (*a*), and after him Hawkins (*b*), define an affray to be a public offence to the terror of the people. This indeed is not very definite. But it may safely be laid down, that all violence not amounting to felony, and all preparations for violence, used publicly, and calculated to terrify the people, is an affray. If two men fight in the public highway, it is an affray. If several persons arm themselves in a dangerous and unusual manner, for the purpose of a breach of the peace, and show themselves publicly thus armed, it is an affray. But no words, however quarrelsome or threatening, amount to that offence (*c*).

An affray is a misdemeanor at common law, punishable with fine or imprisonment or both (*d*).

Commitment :—" *On* ——, *at* ——, *in a certain public street and highway there, unlawfully and to the great terror and disturbance of Her majesty's subjects there being, did make an affray. And you the said keeper,*" &c.

(*g*) 9 G. 4, c. 31, s. 7. See *R.* v. *Sawyer*, 2 Car. & K. 101.
(*a*) 3 Inst. 158.
(*b*) 1 Hawk. c. 63, s. 1.
(*c*) Id. s. 2.
(*d*) Id. s. 20.

By statute.] By the statute of Northampton, 2 Ed. 3, c. 3, no man shall come before the king's justices, or other of the king's ministers doing their office, with force and arms, or bring any force in affray of the peace, or go or ride armed, by night or by day, in fairs, markets or elsewhere, or in presence of the justices or other ministers,—upon pain of forfeiting his armour to the king, and his body to prison, at the king's pleasure; constables and wardens of the peace within their wards shall have power to execute this Act.

According to Hawkins, a justice of the peace may, *ex officio*, proceed to the place where such an affray occurs, may seize the offender's arms, and commit the offender himself to prison. Or if the matter take place in his absence, he may have the facts found by an inquest taken before him, and may commit the offender. The justice should then make a record of the whole proceeding, and transmit it to the Exchequer (*e*). It is scarcely necessary to say that this very rarely occurs in practice.

After the affray is over, the parties cannot be apprehended without warrant (*f*).

How and by whom suppressed.] Any private persons, if they see others fighting, may lawfully part them, may stay them until the heat be over, and may then deliver them to a constable for the purpose of his taking them before a justice of the peace (*g*). *A fortiori* may a justice of peace interfere in this way (*h*). So a constable not only may, but must interfere, if he sees persons fighting or preparing to attack each other; he may imprison them for a reasonable time, until the heat be over, and should then take them before a justice of the peace (*i*); but he cannot arrest them without warrant, where the affray has not been within his view (*k*).

AGENT, BANKER, &c.

Embezzlement of money, &c., by.] "If any money or security for the payment of money, shall be intrusted to any banker, merchant, broker, attorney, or other agent, with any

(*e*) 1 Hawk. c. 63, ss. 5, 6.
(*f*) 2 Hawk. c. 13, s. 8; Id. c. 12, s. 20; 2 Inst. 22.
(*g*) 1 Hawk. c. 63, s. 11.
(*h*) 1 Hawk. c. 63, ss. 18, 19.
(*i*) Id. s. 14.
(*k*) Id. s. 17.

direction in writing to apply such money or any part thereof, or the proceeds or any part of the proceeds of such security, for any purpose specified in such direction, and he shall, in violation of good faith and contrary to the purpose so specified, in anywise convert to his own use or benefit such money, security, or proceeds, or any part thereof respectively:" misdemeanor, transportation for not more than 14 nor less than 7 years; or such fine or imprisonment [with or without hard labour], or both, as the court shall award (*a*). This, however, is not to apply to trustees, or to mortgagees of real or personal property, in respect of any act by them done with relation to the property in trust or mortgage; nor to bankers, &c., receiving money payable on such security, according to the tenor and effect thereof; nor to bankers, &c., selling, transferring or disposing of such securities or effects, to the extent of any lien, claim, or demand enabling them by law to do so (*b*).

Where the prisoner, a merchant, and the private friend of the prosecutor, advised him, as money was likely to be scarce, to get bills discounted to answer any demand upon him, and offered to get them discounted for him; one bill for 1566*l*. 4*s*. he accordingly got discounted, and handed the money to the prosecutor: another for 1681*l*. 5*s*. was intrusted to him for the same purpose, but of which he rendered no account: being indicted on stat. 55 G. 3, c. 63, (which in this respect was nearly the same as the above section,) Abbott, C. J., held that he was not an agent within the meaning of the statute, saying that the statute extended only to cases where agents were intrusted with bills, &c., in the exercise of their particular functions or business (*c*). Where an indictment on the same statute, charged that the defendant was intrusted with Exchequer bills and money to the amount of 1200*l*., with a written direction to lay it out in the funds, and it appeared in evidence that the written instruction, after stating that the prosecutor was going abroad, desired the defendant to lay out the 1200*l*. in the funds, for the prosecutor's son, in the event of any accident happening to the prosecutor, and it appeared that no such accident did happen: Lord Tenterden, C. J., held that this evidence did not sustain the indictment; and the defendant was accordingly acquitted (*d*).

Commitment:—"*That on* ——, *at* ——, *one C. D. did intrust to A. B.* (*he the said A. B. being then a banker and agent* [or as the case may be], *the sum of one hundred pounds* [or as the case may be], *with directions to the said A. B. in*

(*a*) 7 & 8 G. 4, c. 29, s. 49.

(*b*) Id. s. 50; see also sect. 52, *post*, p. 19.

(*c*) *R.* v. *Prince*, 2 Car. & P. 517, Moody & M. 21.

(*d*) *R.* v. *White*, 4 Car. & P. 46.

writing to apply the said sum of money for a certain purpose then and there specified in the said directions, that is to say, [here state the substance of the directions]: *and that the said A. B. afterwards on ——, at ——, in violation of good faith, and contrary to the purpose so in the said directions specified as aforesaid, unlawfully did convert to his own use and benefit the said sum of money* [or as the case may be], *so to him intrusted as aforesaid: against the form of the statute in such case made and provided. And you the said keeper,"* &c.

Selling, &c., chattels or securities intrusted to him.] "If any chattel or valuable security, or any power of attorney for the sale or transfer of any share or interest in any public stock or fund, whether of this kingdom, or of Great Britain or of Ireland, or of any foreign state, or in any fund of any body corporate, company, or society, shall be intrusted to any banker, merchant, broker, attorney, or other agent, for safe custody or for any special purpose, without any authority to sell, negotiate, transfer, or pledge, and he shall in violation of good faith, and contrary to the object or purpose for which such chattel, security, or power of attorney shall have been intrusted to him, sell, negotiate, transfer, pledge, or in any manner convert to his own use or benefit such chattel or security, or the proceeds of the same or any part thereof, or the share or interest in the stock or fund to which such power of attorney shall relate or any part thereof;" misdemeanor, transportation for not more than fourteen nor less than seven years; or such fine or imprisonment, or both, as the court shall award (*e*). The 50th section (*f*), providing that the Act shall not apply to trustees, mortgagees, &c., applies equally to this as to the last offence (*g*).

Commitment:—"*That on ——, at ——, one C. D. did intrust to A. B., for safe custody* [or *for the purpose of* ——], (*he the said A. B. being then a banker* or *agent*, or as the case may be,) *a certain promissory note, drawn by one E. F., for the payment of fifty pounds* [or as the case may be], *without any authority to sell, negotiate, transfer or pledge the same; and that the said A. B., afterwards on ——, at ——, in violation of good faith, and contrary to the object and purpose for which the said promissory note was so intrusted to him as aforesaid, unlawfully did negotiate, transfer, and convert to his own use and benefit* [or as the case may be], *the said promissory note: against the form of the statute in such case made and provided. And you the said keeper,"* &c.

(*e*) 7 & 8 G. 4, c. 29, s. 49.
(*f*) *Ante*, p. 17.
(*g*) See also sect. 52, *post*, p. 19.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 459.

Factor pledging, &c., the property of his principal.] "If any factor or agent, intrusted, for the purpose of sale, with any goods or merchandize, or intrusted with any bill of lading, warehouse keeper's or wharfinger's certificate, or warrant or order for delivery of goods or merchandize, shall for his own benefit, and in violation of good faith, deposit or pledge any such goods or merchandize, or any of the said documents, as a security for any money or negotiable instrument borrowed or received by such factor or agent at or before the time of making such deposit or pledge, or intended to be thereafter borrowed or received:" misdemeanor, transportation for not more than fourteen nor less than seven years; or such fine or imprisonment or both, as the court shall award (*h*).

Commitment:—"*That on* ——, *at* ——, *one C. D. did intrust to A. B.* (*he the said A. B. being then and there a factor and agent*), *one thousand quarters of wheat, of the value of three thousand pounds, for the purpose of selling the same,* [or as the case may be]; *and that the said A. B. afterwards on* ——, *at* ——, *for his own benefit, and in violation of good faith, unlawfully did deposit and pledge the said one thousand quarters of wheat with one E. F., as a security for a sum of two thousand pounds* [or as the case may be] *by the said A. B. then borrowed and received* [or *by the said A. B. before that time borrowed and received,* or *by the said A. B. then intended to be thereafter borrowed and received*] *of and from the said E. F.: against the form of the statute in such case made and provided. And you the said keeper,*" &c.

And with reference to each of the three offences, under this head, it is provided by the 52nd sect. of the statute (*i*), that no banker, merchant, broker, factor, attorney, or other agent, shall be liable to be convicted by any evidence whatever, as an offender against this Act, in respect of any act done by him, if he shall at any time previously to his being indicted for such offence have disclosed such act, on oath, in consequence of any compulsory process of any court of law, or equity, in any action, suit, or proceeding, which shall have been *bonâ fide* instituted by any party aggrieved, or if he shall have disclosed the same in any examination or deposition before any commissioners of bankrupt.

The stat. 7 & 8 G. 4, c. 29, s. 51 (*k*), contained a proviso that nothing therein should extend to such factors or agents as deposit or pledge such goods or documents merely as a

(*h*) 7 & 8 G. 4, c. 29, s. 51.
(*i*) 7 & 8 G. 4, c. 29.
(*k*) *Supra.*

security for such sums as may be due to them from their principal, or for the amount of any bills drawn by or for their principal on and accepted by them.

The like offence under stat. 5 & 6 Vict. c. 39, s. 6.] "If any agent, intrusted with the possession of goods or of the documents of title to goods, shall, contrary to or without the authority of his principal in that behalf, for his own benefit and in violation of good faith, make any consignment, deposit, transfer, or delivery of any goods or documents of title so intrusted to him as aforesaid, as and by way of a pledge, lien, or security;—or shall, contrary to or without such authority, for his own benefit and in violation of good faith, accept any advance on the faith of any contract or agreement to consign, deposit, tranfer or deliver such goods or documents of title as aforesaid:—every such agent shall be deemed guilty of a misdemeanor, and being convicted thereof, shall be sentenced to transportation for any term not exceeding fourteen years nor less than seven years, or to suffer such other punishment by fine, or imprisonment, or by both, as the court shall award; and every clerk or other person who shall knowingly and wilfully act and assist in making any such consignment, deposit, transfer or delivery, or in accepting or procuring such advance as aforesaid, shall be deemed guilty of a misdemeanor, and being convicted thereof shall be liable at the discretion of the court to any of the punishments which the court shall award as hereinbefore last mentioned:—Provided nevertheless, that no such agent shall be liable to any prosecution for consigning, depositing, transferring, or delivering any such goods or documents of title, in case the same shall not be made a security for or subject to the payment of any greater sum of money than the amount which at the time of such consignment, deposit, or transfer, or delivery was justly due and owing to such agent from his principal, together with the amount of any bills of exchange drawn by or on account of such principal, and accepted by such agent: provided also, that the conviction of any such agent so convicted as aforesaid shall not be received in evidence in any action at law or suit in equity against him, and no agent intrusted as aforesaid shall be liable to be convicted by any evidence whatsoever in respect of any act done by him, if he shall, at any time previously to his being indicted for such offence, have disclosed such act, on oath, in consequence of any compulsory process of any court of law or equity in any action, suit, or proceeding which shall have been *bonâ fide* instituted by any party aggrieved, or if he shall have disclosed the same in any examination or deposition before any commissioner of bankrupt."

Commitment:—"*On —— at ——, being then a factor and agent, was intrusted as such factor and agent by C. D. with the possession of* [stating the property], *of the goods and chattels of the said C. D. of the value of ——; and that the said A. B. afterwards on —— at ——, without any authority from the said C. D., his principal in that behalf, did, for his own benefit and in violation of good faith, deposit the same with E. F., by way of pledge, lien and security* [or as the case may be]: *against the form of the statute in such case made and provided. And you the said keeper,*" &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 460.

ALIENS.

Offences by aliens.] Aliens are punishable in this country for offences committed here, in precisely the same way as natural-born subjects; if indicted, &c. it is no excuse whatever, that the act charged against them is not an offence in their native country (*a*).

AMENDMENT OF INDICTMENT.

For variance as to written instruments.] By stat. 9 G. 4, c. 15, any court of oyer and terminer and gaol delivery [or court of quarter sessions (*b*)] may cause the record on which any trial may be depending before it, in any indictment or information for a misdemeanor [or any offence whatever (*c*)], when any variance shall appear between any matter in writing or in print, and the recital or setting forth of it upon the record, to be amended, on payment of such costs (if any) to the other party, as the court shall think reasonable; and thereupon the trial shall proceed, as if no such variance had appeared.

For variance in other respects.] By stat. 14 & 15 Vict. c. 100, s. 1, a variance between the indictment and proof,—in the name of any county, parish, &c.,—in the name of the owner of any property therein mentioned,—or in the name

(*a*) *R* v. *Esop*, 7 Car. & P. 456.
(*b*) 12 & 13 Vict. c. 45, s. 10.
(*c*) 11 & 12 Vict. c. 46, s. 4.

of any person therein alleged to be injured or intended to be injured,—or in the name or description of any person, matter or thing therein named or described,—or in the ownership of any property,—the court may amend, if they think it not material to the merits of the case, and that the defendant cannot thereby be prejudiced in his defence (*c*). Where in an indictment for obstructing a highway, there was a mistake in the description of the highway, it was holden that the indictment might be amended under this statute (*d*). But no amendment, in a material part of an indictment, can be made under these statutes, or at all, after verdict, so as to prevent a defendant moving in arrest of judgment (*e*).

As to amendment in appeals, &c., see *ante*, vol. 1, p. 60.

ANATOMY.

See "Dead Bodies."

APPEAL, COURT OF.

The court and its judges.] The establishment of a criminal court of appeal, by stat. 11 & 12 Vict. c. 78, is the greatest improvement which has perhaps ever been made in the administration of our criminal law, so far as relates to indictable offences. It gives a defendant the full effect of a writ of error, speedily, and with little expense to either party; and the doubt or difficulty being pointed out by the judge who tried the case, affords the judges of the appeal court the best assurance they can have, that no frivolous objections will be submitted to them.

The judges of the court comprise the whole of the fifteen judges of the courts of common law at Westminster,—the justices of the court of Queen's Bench, the justices of the Common Pleas, and the barons of the Exchequer. But by the 3rd section of the Act "the jurisdiction and authorities by this Act given to the said justices of either bench, and barons of the Exchequer, shall and may be exercised by the said justices and barons, or five of them at the least, (of whom the

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(*c*) 14 & 15 Vict. c. 100, s. 1.
(*d*) *R.* v. *Sturge*, 23 Law J. 172, m.
(*e*) *R.* v. *Larkin*, 23 Law J. 125, m.

Lord Chief Justice of the court of Queen's Bench, the Lord Chief Justice of the court of Common Pleas, and the Lord Chief Baron of the court of Exchequer, or one of such chiefs at least, shall be part,) being met in the Exchequer Chamber or other convenient place (*a*).

Appeal, in what cases.] By stat. 11 & 12 Vict. c. 78, s. 1, "when any person shall have been convicted of any treason, felony, or misdemeanor, before any court of oyer and terminer or gaol delivery, or court of quarter sessions, the judge or commissioner or justices of the peace before whom the case shall have been tried, may, in his or their discretion, reserve any question of law, which shall have arisen on the trial, for the consideration of the justices of either bench and barons of the Exchequer;—and thereupon shall have authority to respite execution of the judgment on such conviction, or postpone the judgment until such question shall have been considered and decided, as he or they may think fit;—and in either case the court, in its discretion, shall commit the person convicted to prison, or shall take a recognizance of bail, with one or two sufficient sureties, and in such sum as the court shall think fit, conditioned to appear at such time or times as the court shall direct, and receive judgment, or to render himself in execution, as the case may be." Although justices of the peace are alone mentioned here with reference to a court of quarter sessions, yet it has been holden that a recorder at a borough sessions may reserve a question for the opinion of the judges of this appeal court (*b*).

Under this section, the judge, justices, or recorder may reserve "any question of law, which shall have arisen upon the trial;" even a question upon the form of the indictment (*c*), or a question arising upon a motion in arrest of judgment (*d*). So a question which at the trial was made the subject of a motion in arrest of judgment, may be reserved (*e*). But the court, under this Act, have no authority to review the judgment given by any judge, justices, or recorder upon demurrer (*f*); indeed it is now declared, by a rule of this court, "that no case be heard upon any demurrer to the pleadings" (*g*).

Case.] In order to obtain the opinion of the court of appeal "the judge or commissioner or court of quarter sessions shall state, in a case signed in the manner now usual, the question or questions of law which shall have been so reserved, with

(*a*) 11 & 12 Vict. c. 78, s. 3.
(*b*) *R.* v. *Masters*, 2 Car. & K. 930.
(*c*) *Vide infra*; and see *R.* v. *Webb*, 2 Car. & K. 933. *R.* v. *Martin*, Id. 950; 18 Law J. 137, m.
(*d*) *R.* v. *Martin*, *supra*.
(*e*) *R.* v. *Martin*, 2 Car. & K. 950.
(*f*) *R.* v. *Faderman et al.*, 19 Law J. 147, m.
(*g*) Rule Tr. T. 13 Vict. 19 Law J. xv.

the special circumstances upon which the same shall have arisen; and such case shall be transmitted to the said justices and barons" (*h*). And it has been holden that where the assizes are holden before two judges, and one of them who tries a criminal case, after reserving a point for the consideration of this court, dies, the other judge may state and sign the case (*i*).

The case must briefly state the question or questions of law reserved, and such facts only as raise the question or questions submitted; if the question turn upon the indictment, or upon any count thereof, then the case must set forth the indictment, or the particular count. It must state, also, whether judgment on the conviction was passed, or postponed, or the execution of the judgment respited, and whether the person convicted be in prison or has been discharged on recognizance of bail to appear and receive judgment, or to render himself in execution (*k*).

The original case, signed by the judge, or commissioner, or chairman of sessions, and seventeen copies of the same, one for each judge, and one for each party, shall be delivered to the clerk of the court at the Exchequer Chamber, Westminster, at least four days before the day appointed for the sitting of the court; and the fee thereon, payable to the clerks of the said judges, shall not exceed the fee payable on demurrer or other paper books [2*s*.] as contained in the table of fees allowed and sanctioned by the judges, pursuant to stat. 1 Vict. c. 30 (*l*).

Also, when any case is intended to be argued by counsel or by the parties, notice thereof must be given to the clerk of the court, at least two days previously to the sitting of the court (*m*).

Hearing and judgment.] Upon the case being thus transmitted, "the said justices and barons shall have full power and authority to hear and finally determine the said question or questions,—and thereupon to reverse, affirm, or amend any judgment which shall have been given on the indictment or inquisition on the trial whereof such question or questions have arisen,—or to avoid such judgment, and to order an entry to be made on the record, that in the judgment of the said justices and barons the party convicted ought not to have been convicted,—or to arrest the judgment,—or order judgment to be given thereon at some other session of oyer and terminer

(*h*) 11 & 12 Vict. c. 78, s. 2.

(*i*) *R.* v. *Featherstone*, 23 Law J. 127.

(*k*) Rule Tr. T. 13 Vict. 19 Law J. xv.

(*l*) Rule Tr. T. 13 Vict. 19 Law J. xv.

(*m*) Rule Tr. T. 13 Vict. 19 Law J. xv.

or gaol delivery, or other sessions of the peace, if no judgment shall have been before that time given, as they shall be advised,—or to make such other order as justice may require (*n*).

If the case be argued by counsel, they must confine themselves to the case as stated, and argue it upon the facts therein mentioned (*o*). And if the judge, chairman, or recorder who reserved the case, shall have omitted any matter which may be deemed material, the counsel, before the case comes on for argument, should apply to him to insert it (*p*).

Also, the judges shall have the power, if they think fit, to cause the case to be sent back for amendment; and thereupon the same shall be amended accordingly, and judgment shall be delivered after it shall have been amended (*q*).

The "judgment or judgments of the said justices and barons shall be delivered in open court, after hearing counsel or the parties, in case the prosecutor or the person convicted shall think it fit that the case shall be argued, in like manner as the judgments of the superior courts of common law at Westminster are now delivered" (*r*).

Subsequent proceedings.] "Such judgment and order, if any, of the said justices and barons, shall be certified under the hand of the presiding chief justice or chief baron, to the clerk of assize or his deputy, or to the clerk of the peace or his deputy, as the case may be, who shall enter the same on the original record in proper form; and a certificate of such entry, under the hand of the clerk of assize or his deputy, or the clerk of the peace or his deputy, as the case may be, in the form as near as may be or to the effect mentioned in the schedule annexed to this Act, with the necessary alterations to adapt it to the circumstances of the case, shall be delivered or transmitted by him to the sheriff or gaoler in whose custody the person convicted shall be; and the said certificate shall be a sufficient warrant to such sheriff or gaoler, and all other persons, for the execution of the judgment, as the same shall be so certified to have been affirmed or amended, and execution shall be thereupon executed on such judgment,—and for the discharge of the person convicted from further imprisonment, if the judgment shall be reversed, avoided, or arrested, and in that case such sheriff or gaoler shall forthwith discharge him, and also the next court of oyer and terminer and gaol delivery or sessions of the peace shall vacate the recognizance of bail, if any;—and if the court of oyer and terminer and

(*n*) 11 & 12 Vict. c. 78, s. 2. See *R.* v. *Webb*, 18 Law J. 39, m.; 2 Car. & K. 933.

(*o*) *R.* v. *Smith*, 2 Car. & K. 882.

(*p*) *R.* v. *Smith*, *supra*.

(*q*) 11 & 12 Vict. c. 78, s. 4.

(*r*) Id. s. 3.

gaol delivery or court of quarter sessions shall be directed to give judgment, the said court shall proceed to give judgment at the next session (*r*).

The following is the form, given in the schedule to the Act, of the

Certificate of the Clerk of Assize or Clerk of the Peace.

Whereas at the session of the peace for the county of ——, *held on* ——, *before* —— *and others their fellows,* [or *at the session of oyer and terminer and gaol delivery held for the county of* ——, *on* ——, *before, among others, Sir A. B., knight, one of the justices of the court of* —— *and* ——, [here name the quorum commissioners,] *justices of oyer and terminer and gaol delivery,*] *A. B., late of* ——, *labourer, having been found guilty of felony, and judgment thereupon given, that* [state the substance], *the court before whom he was tried reserved a certain question of law for the consideration of the justices of either bench and the barons of the Exchequer, and execution was thereupon respited in the meantime:*

This is to certify, that the said justices and barons having met in the Exchequer Chamber at Westminster, on the —— *day of* ——, *it was considered by the said justices and barons there that the judgment aforesaid should be annulled, and an entry made on the record, that the said A. B. ought not, in the judgment of the said justices and barons, to have been convicted of the felony aforesaid; and you are therefore hereby required forthwith to discharge the said A. B. from your custody.*

To the gaoler of ——, *and the sheriff of* ——, *and all others whom it may concern.*

(*Signed*) *E. F.*
Clerk of the peace for the county of ——,
[or, *Clerk of assize for* ——,
as the case may be].

And to prevent any fraud being practised, for the purpose of getting the prisoner discharged by means of a forged or altered certificate, it is enacted, "That every person who shall forge or alter, or shall offer, utter, dispose of, or put off, knowing the same to be forged or altered, any certificate of or copy certified by a chief justice,—or any certificate of or copy certified by a clerk of assize or his deputy, or the clerk of the peace or his deputy, as the case may be,—with intent to cause any person to be discharged from custody, or otherwise prevent the due course of justice,—shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be transported beyond the seas for any term not exceeding

(*r*) 11 & 12 Vict. c. 78, s. 2.

ten years, or be imprisoned for any time not exceeding three years, with or without hard labour and solitary confinement, both or either, at the discretion of the court before which he shall be tried" (*s*).

APPROVER.

By the ancient law of this country, if a man, indicted for treason or felony, confessed the indictment, the court might admit him to become an approver against all other persons who were jointly concerned with him in the commission of the offence; in which case he lodged his appeal against his companions with the coroner, and if he succeeded in convicting them he was usually pardoned: but if he failed in his appeal, judgment was immediately given against him upon the indictment (*a*).

From this has originated the modern practice of admitting accomplices to give evidence against their fellows, particularly in cases of felony. This is done, either by the justice of peace before whom the offenders are brought, or by application to the court before whom they are to be tried. This should be done with great caution, and not without being fully apprized of the part the approver has taken in the offence, and being satisfied that his companions cannot be convicted without his testimony. Where this is not the case, it is better for the examining justices, if there be any evidence sufficient to warrant a commitment without the evidence of the accomplice, to commit the accomplice as well as the others, and leave it to the judge at the assizes, or the chairman at the quarter sessions, to exercise his discretion in ordering the accomplice to be taken as a witness before the grand jury or not, if an application for that purpose be made by the counsel for the prosecution.

If, however, the justice, under the circumstances of the case, think it right to receive the evidence of the accomplice, he should not make any promise to him of pardon or impunity, either as to the offence in question, or any other of which the accomplice may be guilty; if the latter act fairly, make a full and unequivocal confession of his and his companions' guilt, and give his evidence before the grand jury, and afterwards upon the trial, in a fair ingenuous manner, he will have an equitable claim to a pardon, or to a commutation of punishment, for that offence (*b*), but not with respect to

(*s*) 11 & 12 Vict. c. 78, s. 6.

(*a*) See 2 Hawk. c. 24.

(*b*) *R.* v. *Rudd*, Cowp. 331.

other offences committed, either by himself alone or in company with other companions (*c*).

As to the evidence of an accomplice, and the necessity of confirming it by other testimony, see *post*, tit. "*Evidence.*"

ARMS, TRAINING TO THE USE OF.

By stat. 60 G. 3 & 1 G. 4, c. 1, s. 1, all meetings and assemblies of persons, for the purpose of training or drilling themselves, or of being trained or drilled, to the use of arms, or for the purpose of practising military exercises, movements, or evolutions, without any lawful authority from His Majesty, or the lieutenant or two justices of the peace of any county or riding, by commission or otherwise for so doing, are prohibited.

Training.] "Every person who shall be present at or attend any such meeting or assembly, for the purpose of training and drilling any other person or persons to the use of arms, or the practice of military exercise, movements, or evolutions, or who shall train or drill any other person or persons to the use of arms, or the practice of military exercise, movements, or evolutions, or who shall aid or assist therein," to be transported for not more than seven years, or imprisoned for not more than two years (*d*). The prosecution must be commenced within six calendar months after the offence committed (*e*).

Commitment:—*For that on ——, at ——, a certain meeting and assembly of persons was unlawfully holden, without any lawful authority in that behalf, for the purpose of being trained and drilled to the use of arms, and to the practice of military exercise and evolutions; and that he the said A. B. then unlawfully was present at and did attend the said meeting and assembly,* for the purpose of then training and drilling other persons then and there present to the use of arms, and to the practice of military exercise and evolutions: against the form of the statute in such case made and provided. And you the said keeper*, &c.

(*c*) *R.* v. *Duce*, 1 Phil. Ev. 37. *R.* v. *Lee*, Id. *R.* v. *West*, Id.

(*d*) 60 G. 3 & 1 G. 4, c. 1, s. 1.

(*e*) Id. s. 7.

Being trained.] "Every person who shall attend or be present at any such meeting or assembly as aforesaid, for the purpose of being, or who shall at any such meeting or assembly be, trained or drilled to the use of arms, or the practice of military exercise, movements, or evolutions;" fine and imprisonment not exceeding two years (*f*). The prosecution must be commenced within six calendar months after the offence committed (*g*).

Commitment:—Same as the above form, to the asterisk,* and then thus: *for the purpose of then and there being trained and drilled to the use of arms, and to the practice of military exercise and evolutions: against the form of the statute in such case made and provided. And you the said keeper*, &c.

Dispersing such meeting, &c.] "It shall be lawful for any justice of the peace, or any constable or peace officer, or any other person acting in their aid or assistance, to disperse any such unlawful meeting or assembly, and to arrest and detain any person present at, or aiding, assisting, or abetting any such assembly or meeting as aforesaid;" and the justice before whom any person so arrested shall be brought, may commit him for trial for such offence, unless he shall give sufficient bail for his appearance at the next assizes, or general or quarter sessions, "to answer to any indictment which may be preferred against him, for any such offence against this Act" (*h*).

Actions against justices or peace officers, for anything done by them under this Act, shall be commenced within six months after the act done; the venue must be in the county where it was done. Plea, the general issue; the defendant to have double costs if he recover (*i*).

ARRAIGNMENT.

See "Trial."

ARREST OF JUDGMENT.

A defendant may move in arrest of judgment, for all defects or matters of objection which are not cured by verdict. I

(*f*) 60 G. 3 & 1 G. 4, c. 1, s. 1.
(*g*) Id. s. 7.
(*h*) 60 G. 3 & 1 G. 4, c. 1, s. 2.
(*i*) Id. s. 5.

shall now, therefore, enumerate the defects which are cured by verdict, and which of course cannot be made the subject of a motion in arrest of judgment:

1. Every objection to an indictment for any formal defect apparent on the face thereof, shall be taken by demurrer or motion to quash such indictment, before the jury shall be sworn, and not afterwards; and every court before which any such objection shall be taken for any formal defect may, if it be thought necessary, cause the indictment to be forthwith amended in such particular by some officer of the court or other person, and thereupon the trial shall proceed as if no such defect had appeared (*k*).

2. No judgment upon any indictment or information for any felony or misdemeanor, whether after verdict or outlawry, or by confession, default or otherwise, shall be stayed or reversed for want of the averment of any matter unnecessary to be proved,—or for the omission of the words "*as appears by the record*," or the words "*with force and arms*," or the words "*against the peace*,"—nor for the insertion of the words "*against the form of the statute*," instead of the words "*against the form of the statutes*," or *vice versâ*; nor for that any person or persons mentioned in the indictment or information is or are designated by a name of office or other descriptive appellation, instead of his, her, or their proper name or names,—nor for omitting to state the time at which the offence was committed, in any case where time is not of the essence of the offence; nor for stating the time imperfectly; nor for stating the offence to have been committed on a day subsequent to the finding of the indictment or exhibiting the information, or on an impossible day, or on a day that never happened;—nor for want of a proper or perfect venue, where the court shall appear by the indictment or information to have had jurisdiction over the offence (*l*). And this extends to indictments for offences committed abroad, as well as for offences committed in this country (*m*). This latter provision as to venue, however, does not aid the omission of venue, altogether (*n*), or the laying of the venue in a wrong county (*o*). By stat. 14 & 15 Vict. c. 100, s. 24, no indictment shall be holden insufficient for any of the defects above enumerated, or for want of a proper or formal conclusion, or for want of or imperfection in the addition of any defendant, or for want of the statement of the value or price of any matter or thing, or the amount of damage, injury or spoil, in any case where the value or price, or the amount of damage, injury or spoil,

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(*k*) 14 & 15 Vict. c. 100, s. 25.
(*l*) 7 G. 4, c. 64, s. 20.
(*m*) *Douglas* v. *The Queen*, 17 Law J. 177, m.
(*n*) *R.* v. *O'Connor et al.*, 13 Law J. 33, m.; 5 Q. B. 16.
(*o*) *R.* v. *Mitchel*, 2 Q. B. 636.

is not of the essence of the offence. In what cases the indictment may be amended, see *ante*, p. 21.

3. No judgment after verdict upon any indictment or information for any felony or misdemeanor, shall be stayed or reversed for want of a similiter;—nor by reason that the jury process has been awarded to a wrong officer upon an insufficient suggestion;—nor for any misnomer or misdescription of the officer returning such process, or of any of the jurors;—nor because any person has served upon the jury who has not been returned as a juror by the sheriff or other officer;—and that where the offence charged has been created by any statute, or subject to a greater degree of punishment by any statute, the indictment or information shall after verdict be held sufficient, if it describe the offence in the words of the statute (*q*).

4. Where there are two or more counts, and one bad, and a general verdict as to both, this is not the subject of a motion in arrest of judgment: because the judgment may still be several, though the verdict be general (*r*). And where the indictment contained two counts for larceny, and a third count stating that the prisoner feloniously received and had the goods "so as aforesaid feloniously stolen, taken, and carried away," it was moved to arrest the judgment, because the jury, by their verdict on the two first counts, had negatived the larceny "as aforesaid:" but the judges held that the last count was good, and the judgment ought not to be arrested;—some of them holding that the words "so as aforesaid" might be rejected as surplusage, and others that supposing these words had the effect of importing into the third count that the prisoner had stolen the goods, that still the third count would be good (*s*).

5. And lastly, the court have no authority to amend an indictment for a material defect, after verdict, so as to prevent the defendant from moving in arrest of judgment (*t*).

ARSON.

See "Arson."

(*q*) 14 & 15 Vict. c. 100, s. 21. See *R.* v. *Martin et ux.*, Ad. & El. 481.

(*r*) Arch. New Cr. Law, 176.

(*s*) *R.* v. *Craddock*, 20 Law J. 31, m.

(*t*) *R.* v. *Larkin*, 23 Law J. 125, m.

ASSAULT.

1. *Common Assault and Battery.*

What.] An assault is an attempt to do a personal injury to another. An attempt to rob another, an attempt to commit a rape, an attempt to have carnal knowledge of a girl under ten years of age, and the like, are called assaults. But in its usual and restricted sense, a common assault means an attempt or offer, with force and violence, to do a corporal hurt to another: as by striking at him, with or without a weapon; or presenting a gun at him, at a distance to which the gun will carry, provided it be so loaded that it can be discharged (*a*); or pointing a pitchfork at him, whilst standing within the reach of it; or holding up one's fist at him; or by any other rash act, done in an angry or threatening manner (*b*). So, riding towards a man with intent to do him a corporal injury, so that he was obliged to run away to avoid it, was holden by Lord Tenterden, C. J., to be an assault (*c*). So, where it was proved that A. advanced in a threatening attitude with an intention to strike B., so that his blow would almost immediately have reached B. if he had not been stopped; Tindal, C. J., held that this was an assault in point of law, although it appeared that at the particular moment when A. was stopped, he was not near enough for his blow to take effect (*d*).

A battery is an injury, however small, actually done to the person of another, in an angry, revengeful, rude, or insolent

(*a*) *R.* v. *James*, 1 Car. & K. 530.

(*b*) 1 Hawk. c. 62, s. 1.

(*c*) *Martin* v. *Shoppee*, 3 Car. & P. 373.

(*d*) *Stephens* v. *Myers*, 4 Car. & P. 349.

manner, as by spitting in his face, or in any way touching him in anger, violently jostling him out of the way, or the like (*e*).

But it is no battery to lay one's hand gently on another, against whom an officer has a warrant, and to tell the officer this is the man he seeks (*f*); or to lay one's hand on a man, if it be necessary to do so, in order to serve him with process (*g*). Or, if a horse, being suddenly frightened, run away with a man, without his fault, and run against and injure another man, this is no assault in the rider, for which even a civil action could be maintained (*h*).

So, if an officer, having a warrant against a man, who will not suffer himself to be arrested, beat or wound him in an attempt to take him; or, if a parent in a reasonable manner chastise his child, or a master his servant, or a schoolmaster his scholar, or a gaoler his prisoner; or, if one confine a friend who is insane, and bind or beat him, in such a manner as is proper in his circumstances; or, if a man force a sword from one, who threatens to kill another therewith; or, if a man gently lay his hand upon another, and thereby stay him from inciting a dog against a third person; or, if I beat one (without wounding him, or throwing at him a dangerous weapon), who wrongfully endeavours with violence to dispossess me of my lands or goods, or the goods of another delivered to me for safe custody, and will not desist upon my laying my hand gently on him and disturbing him; or, if a man beat or (as some say) wound or maim one, who makes an assault upon him, or upon his wife, parent, child or master, especially if it appear that he did all he could to avoid fighting before he gave the wound; or if a man fight with or beat one who attempts to kill a stranger: these and the like are not deemed breaches of the peace (*i*), and the defendant in such cases may justify the battery, by giving the special circumstances in evidence under the plea of not guilty (*j*). But if two parties go out for the purpose of fighting with their fists, and they strike one another, they are each of them guilty of an assault, and it is quite immaterial which of them struck the first blow (*k*). So, where it appeared that the defendant, although he at first struck in his defence, afterwards continued to strike the prosecutor from revenge, after the necessity for it had ceased, he was holden guilty of an assault and battery (*l*). Where an excise-officer gave a man a search warrant to look at, who refused to deliver it back to him, and a scuffle ensued: on an

(*e*) 1 Hawk. c. 62, s. 2.
(*f*) Id.
(*g*) *Harrison* v. *Hodgson*, 10 B. & C. 445.
(*h*) *Gibbon* v. *Pepper*, 1 Ld. Raym. 38; 2 Salk. 637.
(*i*) 1 Hawk. c. 60, s. 3.
(*j*) Id. c. 62, s. 3.
(*k*) Per Coleridge, J., in *R.* v. *Lewis*, 1 Car. & K. 419.
(*l*) *R.* v. *Driscoll*, 1 Car. & M. 214.

indictment for an assault, Lord Tenterden left it to the jury to say, whether the officer had used more force than was necessary to recover possession of the warrant (*m*). If a man conduct himself in a disorderly manner in a public house, and upon the landlord's requesting him to depart, he refuse to do so, the landlord is justified in laying hands upon him to put him out (*n*).

The punishment for a common assault and battery, when the party is prosecuted by indictment, is, fine or imprisonment, or both; and the defendant may be ordered to find sureties for keeping the peace. Also, if the assault have occasioned "actual bodily harm," the court may order the offender to be kept to hard labour during the whole or any part of his imprisonment (*o*). But the indictment in such a case should allege that the assault did occasion "actual bodily harm." See the form of such an indictment, and the evidence necessary to support it, *Arch. New Cr. Law*, 284.

Commitment:—*On* ——, *at* ——, *unlawfully did assault and beat one C. D. And you the said keeper*, &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 282.

As to summary convictions for assaults, see *ante*, vol. 1, p. 137, &c.

2. *Assault and Battery in Particular Cases.*

Upon justices, &c., in case of wreck, 34.
Upon peace or revenue officers, 35.
To prevent apprehension, 35.
In pursuance of conspiracy to raise wages, 36.

Upon justices, &c., in case of wreck.] "If any person shall assault and strike or wound any magistrate, officer, or other person whatsoever, lawfully authorized, on account of the exercise of his duty in or concerning the preservation of any vessel in distress, or of any vessel, goods, or effects wrecked, stranded, or cast on shore, or lying under water:" transportation for seven years, or imprisonment with or without hard labour, for such term as the court shall award (*p*).

Commitment:—*On* ——, *at* ——, *unlawfully did assault one C. D., and him the said C. D. did then and there strike*

(*m*) *R.* v. *Milton*, Moody & M. 107.

(*n*) *Howell* v. *Jackson*, 6 Car. & P. 723. *Moriarty* v. *Brooks*, Id. 684.

(*o*) 14 & 15 Vict. c. 100, s. 29.

(*p*) 9 G. 4, c. 31, s. 24. See stat. 9 & 10 Vict. c. 99, ss. 14, 45.

and beat [or *wound*], *on account of the exercise of his the said C. D.'s duty in and concerning the preservation of a certain vessel then and there in distress* [or as the case may be], *he the said C. D. being then and there a* [*magistrate*, or *officer*, or *person*] *lawfully authorized in that behalf: against the form of the statute in such case made and provided. And you the said keeper*, &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 286.

Upon peace or revenue officers.] An assault upon "any peace or revenue officer, in the due execution of his duty, or upon any person acting in aid of such officer," is punishable with imprisonment, with or without hard labour, for not more than two years, and the court may also fine the offender, and require him to find sureties for keeping the peace (*q*). If, however, the assault on a revenue officer be committed whilst he is engaged in the execution of his duty in the prevention of smuggling, the punishment is transportation for seven years, or imprisonment and hard labour for not more than three years (*r*).

Commitment:—*On* ——, *at* ——, *unlawfully did assault and beat one C. D., he the said C. D. being then and there a* [*peace-officer, to wit, a constable of the said parish*, or *revenue officer, to wit, an officer of Her Majesty's excise*], *and in the due execution of his duty as such* [*constable* or *revenue officer*] *then and there being: against the form of the statute in such case made and provided. And you the said keeper*, &c. If the assault were upon a person who was acting in aid of a constable, &c., say—*he the said C. D. then and there acting in aid of one E. F., a peace-officer*, &c., as above.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 287.

In either of these cases, however, the justices may proceed summarily on stat. 9 G. 4, c. 31 (*s*).

To prevent apprehension.] An "assault upon any person, with intent to resist or prevent the lawful apprehension or detainer of the party so assaulting, or of any other persons for any offence for which he or they may be liable by law to be apprehended or detained," is punishable with imprisonment, with or without hard labour, for not more than two years, and the court may also fine the offender, and require him to find sureties for keeping the peace (*t*).

(*q*) 9 G. 4, c. 31, s. 25.
(*r*) 8 & 9 Vict. c. 87, s. 66.
(*s*) *Ante*, vol. 1, p. 139.
(*t*) 9 G. 4, c. 31, s. 25.

Commitment:—*On ——, at ——, unlawfully did assault and beat one C. D., with intent thereby then and there to resist and prevent the lawful apprehension* [or *detainer*] *of him the said A. B. for* [*having feloniously stolen the goods of one I. K.*]: *against the form of the statute in such case made and provided. And you the said keeper*, &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 290.

In pursuance of conspiracy to raise wages.] An "assault committed in pursuance of any conspiracy to raise the rate of wages," is punishable with imprisonment, with or without hard labour, for not more than two years, and the court may also fine the offender, and require him to find sureties for keeping the peace (*t*).

Commitment:—*On ——, at ——, unlawfully did assault one A. B., in pursuance of a conspiracy between him the said C. D. and others to raise the rate of their wages: against the form of the statute in such case made and provided. And you the said keeper*, &c.

As to assaults upon deer-keepers, see *post, tit.* "*Larceny,*" *and Index.*

3. *Other Assaults.*

Assault with intent to commit a felony.] An "assault with intent to commit a felony,"—is punishable with imprisonment, with or without hard labour, for not more than two years; and the court may also fine the offender, and require him to find sureties for keeping the peace (*u*). It has been already remarked (*x*), that an assault is an attempt to do a personal injury; and where that injury, if effected, would be a felony (as in the case of rape, the violation of girls under the age of ten years, unnatural offences, and the like), for all attempts to commit it, where the felony is not completed, the offender may be indicted and punished under the above section.

Commitment:—*On ——, at ——, did unlawfully assault one A. B., with intent* [*her the said A. B., then and there violently and against her will feloniously to ravish and carnally to know*, or as the case may be, describing the

(*t*) 9 G. 4, c. 31, s. 25. See stat. 6 G. 4, c. 129, *ante*, vol. 1, p. 244.

(*u*) 9 G. 4, c. 31, s. 25.

(*x*) *Ante*, p. 32.

felony, as in a commitment for it]: *against the form of the statute in such case made and provided. And you the said keeper*, &c.

Indecent assaults.] Taking indecent liberties with the person of another, female or male, against her or his will, or where it is merely submitted to from fear, or from submission to the authority, which the offender may have over the party,—is deemed in law an assault, and punishable as such. Where upon an indictment against a schoolmaster for an assault with intent to commit a rape upon one of his female scholars, with a second count for a common assault, it appeared from the evidence, that he did not actually attempt to commit a rape, nor perhaps intend it, but he had taken most indecent liberties with the person of the girl, and without her consent, although she did not actually offer resistance: the judges were of opinion that the evidence was fully sufficient to support the count for a common assault, although not for the assault with intent to commit a rape (*a*). So, where a girl went to a quack doctor, to be cured of some complaint, and he, pretending that he could not otherwise judge of her illness, than by seeing her naked, pulled off her clothes; being indicted for this specially, and also upon a count for a common assault, the jury being of opinion that the defendant did not really think that his seeing the girl naked would assist him in judging of her illness, found him guilty; and the court held the conviction on the count for a common assault good (*b*). So, where a girl of fourteen years of age was placed by her parent under the care of the defendant, a medical man, in consequence of illness arising from suppressed menstruation; he accordingly gave her medicines, and on her coming to his house, and informing him that she was no better, he said,—"then I must try further means with you,"—and he thereupon took hold of her, laid her down in the surgery, took up her clothes, and had connexion with her, to which she made no resistance, believing, as she swore, that she was submitting to medical treatment for the ailment under which she laboured: the defendant being indicted for an assault at the quarter sessions for Dover, the Recorder told the jury that the girl being of an age to consent, if she consented knowing the nature of what the defendant was doing to her, it could not be deemed an assault, but if they were satisfied that she was ignorant of the nature of the defendant's act, and *bonâ fide* believed that he was, as he represented, treating her medically with a view to her cure, it was an assault; and the

(*a*) *R.* v. *John Nichol*, R. & Ry. 130. See also *R.* v. *Butler*, 6 Car. & P. 368.

(*b*) *R.* v. *Rosinski*, MS., and Ry. & M. 19. See *post*, tit. "*Rape.*"

jury convicted him: this case being brought before the Criminal Appeal Court, the judges held that the Recorder had put the case very properly to the jury, and that the conviction was right (*c*).

But where a man was indicted for carnally knowing a girl between the ages of ten and twelve, and in other counts for an assault to do so, and for a common assault: and the evidence only proved an attempt to have carnal knowledge, which hurt the girl, but which appeared to have been done perfectly with her consent: the judges held that the defendant could not be convicted for the assault with intent, &c., or for the common assault, it being done with the girl's consent; but that he might be indicted for a misdemeanor in attempting to commit the offence (*d*). So, where three boys, each under the age of fourteen years, had connexion with a girl nine years old, with her assent, and as from their ages they could not be indicted for the felony, they were indicted for an assault,—the jury found them guilty, saying at the same time that the girl was an assenting party, but that from her tender years she did not know what she was about: but the case being referred to the Criminal Appeal Court, the judges held that as the jury had actually found that the girl consented, the conviction was wrong (*e*). However, a girl's merely submitting to such an act, is not to be deemed conclusive of her consent to it, as it might in the case of a woman or adult girl, but the jury will have to judge from the facts of the case, whether she consented willingly, or merely submitted to it from fear, and if the latter, the defendant may be convicted (*f*).

The commitment in such a case, may be as for a common assault.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 313.

ATTAINDER.

See "Trial."

(*c*) *R.* v. *Case*, 19 Law J. 174, m.
(*d*) *R.* v. *Martin*, 9 Car. & P. 213.
(*e*) *R.* v. *Read at al.*, 2 Car. & K. 957.
(*f*) *R.* v. *Day*, 9 Car. & P. 722, per Coleridge, J.

ATTEMPTS TO MURDER, &c.

Attempt to murder by poison.] "Whosoever shall administer to, or cause to be taken by, any person, any poison or other destructive thing," with intent to commit murder, shall be guilty of felony, and suffer death (*a*). To bring a case within this section, it must appear that it was "poison or other destructive thing," which was administered, and that it was actually taken into the stomach (*b*). It is not sufficient that it should be merely offered or tendered to the party, or left for him in order that he might take it (*c*). If the evidence leave this doubtful, the offender may be committed for an attempt to poison, as shall presently be mentioned. But whether the thing administered had any bad effect or not is immaterial (*d*).

And "whosoever shall attempt to administer to any person any poison or other destructive thing," with intent to commit murder, shall, although no bodily injury be effected, be guilty of felony, and shall be transported for life, or for not less than fifteen years, or be imprisoned, with or without hard labour, for not more than three years (*e*). Where A. gave poison to B., with directions to administer it to C.; and B. instead of doing so, handed it over to C., telling him at the same time the instructions A. had given him: it was holden that this was not an attempt to administer the poison by A. (*f*).

If it appear that the act was done wilfully, it will be sufficient presumptive evidence of the intent.

Commitment:—*On* ——, *at* ——, *did feloniously administer to one A. B. one ounce weight of a certain poison called white arsenic* [or *did feloniously attempt to administer to, &c.* as above, and stating the particulars of the attempt],

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(*a*) 1 Vict. c. 85, s. 2.

(*b*) See *R.* v. *Cudman*, Ry. & M. 114, and per Park, J., in *R.* v. *Harley*, 4 Car. & P. 369.

(*c*) See *R.* v. *Lewis*, 6 Car. & P. 161. *R.* v. *Harley*, *supra*.

(*d*) *R.* v. *Cluderoy*, 2 Car. & K. 907; 19 Law J. 119, m.

(*e*) 1 Vict. c. 85, s. 3.

(*f*) *R.* v. *Williams & Rees*, 1 Car. & K. 589.

with intent thereby then and there feloniously, wilfully and of his malice aforethought, the said A. B. to poison, kill and murder: against the form of the statute in such case made and provided. And you the said keeper, &c.

See the form of an indictment for administering poison, and the evidence to support it, *Arch. New Cr. Law*, 255; and the form of an indictment for attempting to administer poison, and the evidence to support it, *Id.* 258.

Attempt to murder by stabbing, &c.] Whosoever shall "stab, cut, or wound any person, or shall by any means whatsoever cause to any person any bodily injury dangerous to life," with intent to murder, shall be guilty of felony, and suffer death (*g*). A contused wound, caused by a piece of metal or the like, not used for cutting, is not a cutting within the Act (*h*); but it is a wounding, within the meaning of it · and where such an instrument, though not commonly used for the purpose, was capable of cutting, and actually did give the prosecutor an incised wound, it was holden to be a cut within the meaning of the Act (*i*). But a wound within the meaning of the Act may be inflicted with a hammer or bludgeon or other blunt instrument, if it break the skin and draw blood (*k*). So, knocking a man down, and kicking him in the face with great violence, breaking the skin and drawing blood, has been holden to be a wounding (*l*). But a wound inflicted with the hands or teeth, as by beating with the fists or biting, is not within the Act (*m*). The violence with which the act is committed is to be considered more with reference to the intent with which it is done. But it is immaterial in what part of the body the wound is given, if it otherwise appear to have been given within the intent mentioned in the statute (*n*).

As to the general offence here mentioned, namely, "any bodily injury dangerous to life," it was holden that striking and kicking a child, knocking its head against a beam in the ceiling, and then throwing it down upon a brick floor, so as to cause a concussion of the brain, amounted to this offence, if proved to be done with intent to murder; but Patteson, J., held that there must be proof of a positive intent to murder, merely proving that the act was done under circumstances, that if death had ensued, it would have been murder, would not be sufficient, if murder were not in fact intended (*o*).

(*g*) 1 Vict. c. 85, s. 2.

(*h*) *R.* v. *Adams*, 1 Russ. 597.

(*i*) *R.* v. *Hayward*, R. & Ry. 78. *R.* v. *Peter Atkinson*, Id. 104.

(*k*) *R.* v. *Withers*, Ry. & M. 204. *R.* v. *Payne et al.*, 4 Car. & P. 558. *R.* v. *Wood & M'Mahon*, Ry. & M. 278.

(*l*) *R.* v. *Shadbolt*, 5 Car. & P. 504.

(*m*) Per Patteson, J., in *R.* v. *Harris*, 7 Car. & P. 446. *R.* v. *Stevens*, Ry. & M. 409.

(*n*) See *R.* v. *Griffith*, 1 Car. & P. 298.

(*o*) *R.* v. *Cruse et ux.*, 8 Car. & P. 541.

Commitment:—*On ——, at ——, did feloniously stab and wound one A. B.,* [or *cause unto one A. B. a certain bodily injury dangerous to life, to wit ——, by then and there feloniously ——,* here state the act done,] *with intent thereby then feloniously, wilfully, and of his malice aforethought, the said A. B. to kill and murder: against the form of the statute in such case made and provided. And you the said keeper,* &c.

See the form of an indictment for the offence of stabbing, cutting or wounding, and the evidence necessary to support it, *Arch. New Cr. Law,* 259. And see the form of an indictment for doing other bodily injury dangerous to life, and the evidence necessary to support it, *Id.* 269.

And whosoever shall "shoot at any person, or shall by drawing a trigger, or in any other manner attempt to discharge any kind of loaded arms at any person," with intent to murder, shall, although no bodily injury shall be effected, be guilty of felony, and be transported for life, or not less than fifteen years, or be imprisoned with or without hard labour for not more than three years (*p*). Where the prisoner had but the barrel of a percussion gun, detached from the stock and lock, but by striking the percussion cap, which was on the nipple of the barrel, he fired it at, and shot B.: this was holden to be a shooting within the meaning of the Act (*q*). The clause of the statute, however, relates more particularly to shooting without wounding; shooting and wounding being within the second section (*r*). As to the attempt to shoot, it has been holden that the gun or pistol, at the time the trigger is drawn, &c., must be in a state to effect the injury intended; and therefore where the pistol, though loaded, was not primed (*s*), or where, although loaded and primed, yet the touch-hole was plugged up, so that it could not be fired (*t*), it was holden not to be a case within the Act. So, where the prisoner fired into a room where he imagined the prosecutor to be, but he was not there at the time, it was holden not to be within the statute (*u*).

Commitment for shooting:—*On ——, at ——, with a certain gun, loaded with powder and divers leaden shots, feloniously did shoot at and against one A. B., with intent thereby then and there feloniously, wilfully, and of his malice aforethought, the said A. B. to kill and murder: against the form of the statute in such case made and provided. And you the said keeper,* &c.

(*p*) 1 Vict. c. 85, s. 3.
(*q*) *R.* v. *Coates,* 6 Car. & P. 394.
(*r*) See *ante,* p. 40.
(*s*) *R.* v. *Wm. Carr,* R. & Ry. 377. *R.* v. *James,* 1 Car. & K. 530.
(*t*) *R.* v. *Harris,* 5 Car. & P. 159.
(*u*) *R.* v. *Lovell,* 2 Mo. & R. 39.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 270.

Commitment for attempting to shoot:—*On* ——, *at* ——, *certain loaded arms, to wit, a pistol, then and there loaded with powder and one leaden bullet, at and against one A. B., feloniously did present, point, and level, and then and there, by drawing the trigger of the said pistol* [or as the case may be], *feloniously did attempt to discharge the same at and against the said A. B., with intent*, &c. as in the last form.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 272.

Attempt to murder, by attempting to drown, suffocate, &c.] Whosoever shall "attempt to drown, suffocate or strangle any person," with intent to murder, shall, although no bodily injury shall be effected, be guilty of felony, and be transported for life, or for not less than fifteen years, or be imprisoned with or without hard labour for not more than three years (*v*).

Commitment:—*On* ——, *at* ——, *feloniously did attempt to drown* [or *suffocate* or *strangle*] *one A. B., by then and there* [&c. stating how], *with intent thereby then and there feloniously, wilfully, and of his malice aforethought, the said A. B. to kill and murder: against the form of the statute in such case made and provided. And you the said keeper*, &c.

See the forms of indictments for these offences, and the evidence necessary to support them, *Arch. New Cr. Law*, 276, 277.

Attempt to do bodily injury, &c. by shooting, stabbing, &c.] "Whosoever unlawfully and maliciously shall shoot at any person, or shall, by drawing a trigger, or in any other manner, attempt to discharge any kind of loaded arms at any person, or shall stab, cut or wound any person,"—with intent to maim, disfigure, or disable such person, or to do him some other grievous bodily harm,—or with intent to resist or prevent the lawful apprehension or detainer of any person,—shall be guilty of felony, and be transported for life, or for not less than fifteen years, or be imprisoned, with or without hard labour, for not more than three years (*w*). Where a pistol, loaded with powder and the wadding only, was fired at a woman, and so close to her and in such a direction, that it was capable of doing her grievous bodily harm, the court held it to be within the statute (*x*). As to the attempt to shoot, and as to stabbing, cutting, and wounding, see *ante*, pp. 41, 40. A wound inflicted by biting, has been holden not to be within the statute, that being intended to apply only to a wounding by some instrument, and not to a wounding by the teeth or hands

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(*v*) 1 Vict. c. 85, s. 3.
(*w*) Id. s. 4.
(*x*) *R.* v. *Wm. Kitchen*, R. & Ry. 95.

or the like (*y*). But where a man struck another with an air-gun on the hat, with great force, so that the hat inflicted a contused wound upon the head, the judges held this to be a wounding within the meaning of the statute (*z*). It is generally understood, that to constitute a wounding, the skin must be broken; and in one case, three of the judges held that, supposing it to be so, a breaking of the cuticle, or outer skin, would not be sufficient; the inner as well as the outer skin must be broken (*a*). But where it appeared that the prisoner hit the prosecutor a blow with a hammer in the face, which had the effect of breaking the jaw in two places, and the skin was broken internally, but not externally: Lord Denman, C. J., and Park, J., held this to be a wounding within the meaning of the Act (*b*).

As to the intent, it may be inferred from the conduct or expressions of the party, before or at the time of his committing the act, or afterwards from the nature of the wound itself; but the latter is not in all cases to be depended upon as a test of the intent, for the wound may be slight, and yet the intent of the party inflicting it evidently such as is mentioned in the statute (*c*). Cutting a female child's private parts, for the purpose of enlarging them, has been holden to be a grievous bodily harm within the meaning of the statute, and to have been done with that intent, although the hymen was not injured, and the wound not deep or dangerous (*d*). Where the prisoner wounded the prosecutor, in an attempt to rob him, and was indicted on this Act, Coleridge, J., told the jury that if they thought that the wound was inflicted with intent to do the prosecutor some grievous bodily harm, in order to effectuate the purpose of robbing him, they should find him guilty; and he was found guilty accordingly (*e*).

As to what apprehension is lawful, that subject has been already treated of, under the title "*Arrest*," *ante*, vol. 1, pp. 122, 132 (*f*). Malice is also made an ingredient in this offence, by the words of the statute. But this must not be understood to mean a preconceived malice against the individual, which, if death had ensued, would have rendered the offence murder, but that kind of malice which may be inferred from the party's purposely committing the offence, with any one of the intents stated in the statute, and not in the

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(*y*) *R.* v. *Harris*, 7 Car. & P. 446.
(*z*) *R.* v. *Sheard*, 7 Id. 846.
(*a*) *R.* v. *M'Loughlin*, 8 Car. & P. 635.
(*b*) *R.* v. *Leonard Smith*, 8 Car. & P. 173.
(*c*) *R.* v. *Hunt*, Russ. 93.
(*d*) *R.* v. *Cox*, R. & Ry. 362.
(*e*) *R.* v. *Bowen*, 1 Car. & M. 149.
(*f*) See *R.* v. *Hems*, 7 Car. & P. 312. *R.* v. *Dyson*, 1 Stark. 246. *R.* v. *Ricketts*, 3 Camp. 68. *R.* v. *Taylor*, 7 Car. & P. 266. *R.* v. *Whalley*, Id. 245.

necessary defence of his person or property (*y*). Also, if a man shoot at or cut A., imagining that he is doing so to B., and out of malice to B., he may be stated to have done so with intent to maim or disable A., and the facts will be considered as proving that statement (*z*).

Commitment same as that for stabbing, shooting, &c., *ante*, p. 41, but stating the intent thus: *with intent thereby then and there* [*to maim the said A. B.*, or *to disfigure* or *disable*, or *to do some grievous bodily harm to the said A. B.*, or *to resist and prevent the lawful apprehension and detainer of him the said C. D.*, or *of one E. F.*, as the case may be]: *against the form of the statute in such case made and provided. And you the said keeper*, &c.

See the form of an indictment for shooting or attempting to shoot with intent to do grievous bodily harm, and the evidence necessary to support it, *Arch. New Crim. Law*, 274; of indictment for stabbing, cutting, or wounding with the like intent, and evidence, *Id.* 262.

As to shooting at vessels or boats belonging to the navy or revenue, see *post*, tit. "*Smuggling.*"

Doing bodily injury, with or without weapon.] "If any person shall unlawfully and maliciously inflict upon any other person, either with or without any weapon or instrument, any grievous bodily harm,—or unlawfully and maliciously cut, stab, or wound any other person:"—misdemeanor, imprisonment with or without hard labour for not more than three years (*a*).

Commitment for inflicting bodily injury:—*On* ——, *at* ——, *did unlawfully and maliciously inflict upon one A. B. grievous bodily harm, by* [here state the facts shortly]: *against the form of the statute in such case made and provided. And you the said keeper*, &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 268.

Commitment for misdemeanor in cutting, stabbing, or wounding:—*On* ——, *at* ——, *unlawfully and maliciously did stab one A. B.: against the form of the statute in such case made and provided. And you the said keeper*, &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 267.

(*y*) *R.* v. *Griffiths*, 8 Car. & P. 248. See Arch. Cr. St. 30, 31.

(*z*) *R.* v. *Hunt*, Ry. & M. 93.

(*a*) 14 & 15 Vict. c. 19, s. 4.

Doing bodily injury, by explosive substances or corrosive liquids.] "Whoever shall unlawfully and maliciously, by the explosion of gunpowder or other explosive substance, burn, maim, disfigure, disable, or do any grievous bodily harm to any person, shall be guilty of felony:" transportation for life or not less than fifteen years, or imprisonment with or without hard labour for not more than three years (*b*). "And whoever shall unlawfully and maliciously use any gunpowder or other explosive substance to explode,—or send or deliver to, or cause to be taken or received by any person, any explosive substance, or any other dangerous or noxious thing,—or cast or throw upon or otherwise apply to any person any corrosive fluid or other destructive or explosive substance,—with intent, in any of the cases aforesaid, to burn, maim, disfigure, or disable any person, or to do some grievous bodily harm to any person,"—shall, although no bodily injury be effected, be guilty of felony, and be transported for life, or not less than fifteen years, or imprisoned, with or without hard labour, for not more than three years (*c*). Boiling water was holden to be a "destructive matter," within stat. 1 Vict. c. 85, s. 5, the former statute upon this subject; and, therefore, where a woman poured boiling water over the face and into the ear of her husband, whilst he was asleep, which caused temporary blindness, and on one side permanent deafness: it was holden that she might be convicted upon that statute (*d*). The offence of sending explosive substances to persons, for the purpose of doing them some bodily injury by the explosion, was holden not to be an attempt to discharge loaded arms, within the repealed clause of stat. 9 G. 4, c. 31, on that subject (*e*); nor is it within the above clause of this statute, unless the party be actually burnt or otherwise injured by it; but it would evidently be indictable as a misdemeanor at common law, as an attempt to commit a felony. If sent to A. and it comes into the hands of B., and injure him, it will be an offence within the Act; and it may be stated to have been sent to B. with intent to injure him (*f*).

As to throwing corrosive fluids, &c.: the doing so, with intent to spoil or burn the clothes of any person, was formerly made felony by stat. 6 G. 1, c. 23, s. 11, (now repealed by stat. 7 G. 4, c. 64, s. 32); and on that statute it was holden that if the act were done for the purpose of injuring the person and not the clothes of the party, it was not a case within

(*b*) 9 & 10 Vict. c. 25, ss. 3, 5.
(*c*) Id. ss. 4, 5.
(*d*) *R.* v. *Cranford*, 2 Car. & K. 129.
(*e*) *R.* v. *Mountford*, 7 Car. & P. 242.
(*f*) See *R.* v. *Hunt*, *supra*.

the meaning of it (*g*). And as under this Act, the offence must be committed with intent to injure the person, not the clothes of the party, if a man, intending to spoil the clothes only, also in doing so injure the person of the party, it is probable that it would not be deemed an offence within this Act, unless it appear clearly that the necessary or very probable consequence of attempting thus to injure the clothes, would be attended with an injury to the person also. If, on the other hand, it appear clearly that the offender intended to injure the person, but succeeded only to the extent of injuring the clothes, it is probable that he might be indicted for it, as for an attempt to commit a felony, which is a misdemeanor at common law.

Commitment for doing injury by the explosion of gunpowder, &c.:—*On* ——, *at* ——, *unlawfully and maliciously, by the explosion of gunpowder, did feloniously burn* [*maim, disfigure, disable*], *and do grievous bodily harm to one A. B.: against the form of the statute in such case made and provided. And you the said keeper*, &c.

The like, with intent to injure, &c.:—*On* ——, *at* ——, *unlawfully, maliciously, and feloniously did cause ten pounds weight of gunpowdor to explode, with intent then and thereby to burn* [or as the case may be] *one A. B.: against the form of the statute in such case made and provided. And you the said keeper*, &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 278.

Commitment for sending explosive substances, &c.:—*On* ——, *at* ——, *unlawfully, maliciously and feloniously did send to one A. B.* [*two drachms weight of a certain explosive substance called* ——, here describe the thing sent], *with intent then and thereby to burn* [or as the case may be] *him the said A. B.: against the form of the statute in such case made and provided. And you the said keeper*, &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 279.

Commitment for throwing corrosive fluids:—*On* ——, *at* ——, *unlawfully, maliciously and feloniously did cast and throw upon one A. B. half a pint of a certain corrosive fluid and destructive matter called oil of vitriol, with intent then and thereby to burn* [or as the case may be] *him the said A. B.: against the form of the statute in such case made and provided. And you the said keeper*, &c.

See the form of an indictment for this offence, and evidence necessary to support it, *Arch. New Cr. Law*, 280.

(*g*) *R.* v. *Williams*, 1 Leach, 529.

ATTEMPTS TO COMMIT OTHER OFFENCES.

All attempts to commit a felony, not specially provided for and made punishable by some particular statute, are punishable as misdemeanors at common law, whether committed with force or otherwise (*a*); and in like manner, every attempt to commit a misdemeanor, either at common law or created by statute, is itself a misdemeanor at common law (*b*). The punishment is by fine or imprisonment, or both; except as to assaults, with intent to commit a felony, which are punishable as stated, *ante*, p. 36. See *Arch. New Cr. Law*, 628.

Commitment:—*On* ——, *at* ——, *did unlawfully attempt and endeavour to* [&c. stating the felony or misdemeanor attempted], *by then* [&c. stating the act done]. *And you the said keeper*, &c.

BAIL, PERSONATING.

See "Personating."

BANKS, DESTROYING.

See "Malicious Injuries."

BANK NOTES.

See "Forgery," "Larceny."

BANKER.

See "Agent."

(*a*) See *R.* v. *Higgins*, 2 East, 5.

(*b*) *R.* v. ——, R. & Ry. 107, per Le Blanc, J. *R.* v. *Butler*, 6 Car. & P. 368, per Patteson, J. *R.* v. *Wm. Roderick*, 7 Car. & P. 795, cor. Parke, B. *R.* v. *Ball*, 1 Car. & M. 249.

BANKRUPT, FRAUDS BY.

Not surrendering.] If any person adjudged bankrupt "shall not,—upon the day limited for his surrender, and before three of the clock of such day,—or at the hour and upon the day allowed him for finishing his examination,—after notice thereof in writing, to be served upon him personally or left at the usual or last known place of abode or business of such person, or personal notice in case such person be then in prison, and notice given in the *London Gazette* of the issuing of the fiat, (having no lawful impediment proved to and allowed by the court,) and of the sittings of the court, or filing of the petition for adjudication of bankruptcy against him, as the case may be,—surrender himself to such court, and sign or subscribe such surrender, and submit to be examined before such court from time to time:" felony, transportation for life or not less than seven years, or imprisonment, with or without hard labour, for not more than seven years (*a*). The words "with intent to defraud his creditors," are in the latter part of the section, after the statement of the other offences hereafter mentioned under this head; but this intent has been holden to override the whole of them (*b*). Where the bankrupt was in prison at the time, Littledale, J., held that his not surrendering was not a case within a former statute upon the subject (*c*). Also where the bankrupt had surrendered and submitted to be examined, but afterwards refused to answer certain questions, a majority of the judges held, that as he had surrendered, and submitted to the jurisdiction of the commissioners, his refusing afterwards to answer particular questions was not a case within that statute (*d*).

Commitment:—*For that he the said C. D., being a person against whom a petition in bankruptcy had been filed, and who had thereupon been adjudged bankrupt, whereof notice in writing was on ——, at ——, left at the usual* [or *last*] *place of abode* [or *business*] *of the said C. D., and notice given in the Gazette of the said adjudication and of the sittings of the court authorized to act in the prosecution of the same against him, feloniously did not before three of*

(*a*) 12 & 13 Vict. c. 106, s. 251.
(*b*) *R.* v. *Hill*, 1 Car. & K. 168.
(*c*) *R.* v. *Mitchell*, 4 Car. & P. 251.
(*d*) *R.* v. *Page*, R. & Ry. 392. *Sed qu.*

the clock on ——, (*being the day limited in that behalf for the surrender of the said bankrupt,*) *surrender himself to the said court* [&c. describing the offence], *with intent thereby then and there to defraud his creditors : against the form of the statute in such case made and provided. And you the said keeper,* &c.

Not discovering his estate, &c.] "Or if any such bankrupt, upon such examination, shall not discover all his real and personal estate, and how, and to whom, upon what consideration, and when, he disposed of, assigned, or transferred any of such estate, and all books, papers, and writings relating thereunto, (except such part as shall have been really and *bonâ fide* before sold or disposed of in the way of his trade, or laid out in the ordinary expense of his family) :" felony, &c. as *ante*, p. 48 (*e*).

Commitment :—*For that he the said C. D. being a person against whom a petition in bankruptcy had been filed, and who had thereupon been adjudged bankrupt,*† *upon being examined before the court authorized to act in the prosecution of the said adjudication against him,** *on* ——, *at* ——, *feloniously did not discover certain* [*personal estate, to wit, a certain bill of exchange for* 100*l.*, *purporting to be drawn by I. K. upon and accepted by L. M., of which he the said C. D. was then and there possessed,* &c. describing the offence], *the same not having been really and bonâ fide before then* [*sold* or] *disposed of in the way of his trade, or laid out in the ordinary expense of his family; with intent thereby then and there to defraud his creditors: against the form of the statute in such case made and provided. And you the said keeper,* &c.

Not delivering up his goods, books, &c.] "Or if any such bankrupt upon such examination shall not deliver up to such court all such part of such estate, and all books, papers, and writings, relating thereunto, as shall be in his possession, custody, or power, (except the necessary wearing-apparel of himself, his wife, and children) :" felony, &c. as *ante*, p. 48 (*f*).

Commitment, same as the last form, to the asterisk,* and then thus: *on* ——, *at* ——, *feloniously did not deliver up to the said court certain personal property, to wit, one gold watch of the value of* 20*l. which was then and there in the possession, custody and power of the said C. D., and not being any part of the necessary wearing-apparel of the said C. D.,*

(*e*) 12 & 13 Vict. c. 106, s. 251. (*f*) Id.

or of his wife or children; with intent thereby then and there to defraud his creditors: against the form of the statute in such case made and provided. And you the said keeper, &c.

Concealing or embezzling to the value of 10*l*.] "Or if any such bankrupt shall remove, conceal, or embezzle any part of such estate, to the value of 10*l*. or upwards, or any books of account, papers, or writings relating thereto, with intent to defraud his creditors: " felony, &c. as *ante*, p. 48 (*g*).

Commitment, same as the form, *ante*, p. 49, to the mark†, and then thus: *on* ——, *at* ——, *feloniously did remove, conceal, and embezzle a certain part of his personal estate, to the value of* 10*l*. *and upwards, to wit, one gold watch of the value of* 20*l*., *with intent thereby then and there to defraud the creditors of him the said C. D. of the same: against the form of the statute in such case made and provided. And you the said keeper*, &c. If the commitment be for removing or concealing merely, it seems that it should show that the bankrupt had passed his last examination (*h*).

See also stat. 12 & 13 Vict. c. 106, ss. 252, 253.

BARON AND FEME.

See "Husband and Wife."

BARRATRY.

A barrator is said to be a common mover, exciter, or maintainer of suits or quarrels, either in courts or in the country (*i*). The offence is punishable with fine, imprisonment, or both. By stat. 12 G. 1, c. 29, if any person, convicted of common barratry, shall afterwards practise as an attorney, he is liable to be transported for seven years.

BAWDY HOUSE.

See "Disorderly House."

BESTIALITY.

See "Unnatural Offences."

(*g*) 12 & 13 Vict. c. 106, s. 251.

(*h*) See *R.* v. *Walters*, 5 Car. & P. 138.

(*i*) 1 Hawk. c. 81, s. 1.

BIGAMY.

"If any person, being married, shall marry any other person during the life of the former husband or wife, whether the second marriage shall have taken place in England or elsewhere," felony, transportation for seven years, or imprisonment, with or without hard labour, for not more than two years (*a*). But by the same section, the Act shall not extend to a second marriage out of England by any but a British subject; nor to a person marrying a second time, "whose husband or wife shall have been continually absent from such person for the space of seven years then last past, and shall not have been known by such person to be living within that time (*b*);" nor to a person who, at the time of the second marriage, shall be divorced from the bond of the first marriage, nor to a person whose former marriage shall have been declared void by the sentence of a court of competent jurisdiction (*c*).

The offender may be tried, &c. in the county in which he is apprehended or is in custody (*d*).

In order to sustain this charge, the prosecutor must prove the two marriages. These may be proved by any person who was present, and can identify the parties, or by producing and proving an examined copy of the registry of the marriage, and giving satisfactory proof of identity; and this evidence will be sufficient, without proof of any licence or publication of banns (*e*). If either marriage were in a foreign country, proof that it was solemnized in manner required by the law of that country, should be given, and some person conversant with the law of the country should be called to prove it (*f*). Or if it be proved to have been solemnized in the manner usual in the country, it will be good presumptive proof that it was a valid marriage (*g*). But if either marriage be void, such as a marriage with a deceased wife's sister (*h*), or the like, the party cannot be convicted. It may be necessary to mention that since the Marriage Act (*i*), a marriage, by licence, of persons under age, without the consent of parents is not void, the 16th section of that act upon the subject being merely directory (*k*); also, that a marriage by banns in a false name, is not a nul-

(*a*) 9 G. 4, c. 31, s. 22.

(*b*) See *R.* v. *Jones*, 1 Car. & M. 614. *R.* v. *Cullen*, 9 Car. & P. 681.

(*c*) 9 G. 4, c. 31, s. 22.

(*d*) Id.

(*e*) *R.* v. *Allison alias Wilkinson*, R. & Ry. 109.

(*f*) *R.* v. *Povey*, 22 Law J. 19, m.

(*g*) *Lacon* v. *Higgins*, 3 Stark. 178. See *R.* v. *Dent*, 1 Car. & K. 97.

(*h*) *R.* v. *Chadwick*, 17 Law J. 33, m.

(*i*) 4 G. 4, c. 76.

(*k*) *R.* v. *Birmingham*, 8 B. & C. 29.

lity, unless it be proved that both parties had a knowledge of it (*l*); nor can it be objected to by the party who caused the false name to be used (*m*); nor will it be any objection that at the time of the marriage by banns, the parties did not reside in the parish (*n*). The prosecutor must also prove that at the time of the second marriage, the first wife or husband was alive. It may be necessary to mention that the first wife or husband cannot be a witness; the second may.

Commitment:—*On* ——, *at* ——, *feloniously did marry and take to wife one E. F., C. B. his former wife, to whom the said A. B. was previously married, being then alive: against the form of the statute in such case made and provided. And you the said keeper*, &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch New Cr. Law*, 610.

BLASPHEMY AND PROFANENESS.

Blasphemies against God, such as denying his being or providence, and all contumelious reproaches of Christ, being offences tending to subvert religion and morality, are indictable as misdemeanors at common law, and punishable with fine or imprisonment, or both (*a*).

In the same manner, all profane scoffing at the holy Scripture, or exposing any part of it to contempt or ridicule, being an offence of the same tendency, is likewise a misdemeanor, and similarly punishable (*b*).

So, speaking or writing against Christianity, or even against the established religion (excepting the disputes of learned men upon particular controverted points (*c*),) is a misdemeanor at common law, punishable in the like manner (*d*).

Commitment for a blasphemous libel:—*On* ——, *at* ——, *unlawfully and wilfully did compose, print, and publish a certain scandalous, impious, blasphemous and profane libel [of and concerning the holy Scriptures, and the Christian religion]. And you the said keeper*, &c.

(*l*) *R.* v. *Wroxton*, 4 B. & Ad. 640.

(*m*) *R.* v. *Allison alias Wilkinson*, R. & Ry. 109. *R.* v. *Edwards*, R. & Ry. 283.

(*n*) *R.* v. *Hind*, R. & Ry, 253.

(*a*) 1 Hawk. c. 5, ss, 1, 5. See *R.* v. *Taylor*, 1 Vent. 293. *Woolston's case*, 2 Str. 834; Fitzg. 64. *R.* v. *Annet*, 1 W. Bl. 395.

(*b*) 1 Hawk. c. 5, ss. 2, 5.

(*c*) Per Cur. in *R.* v. *Woolston*, *supra*.

(*d*) See *R.* v. *Thomas Paine*, 1 East, P. C. 5. *R.* v. *Hall*, 1 Str. 416.

BRIBERY.

Bribery at common law.] Bribery, in its usual acceptation, is the receiving or offering of any undue reward, by or to any person whatsoever, whose ordinary profession or business relates to the administration of public justice, in order to incline him to do a thing against the known rules of honesty and integrity (*a*). It is a misdemeanor at common law, punishable, both as to the party receiving, and the party giving or even offering the bribe, with fine or imprisonment. or both (*b*).

Bribery at elections.] Every person who shall, directly or indirectly, give, lend, or agree to give or lend any money, &c. to or for any voter, in order to induce any voter to vote, or refrain from voting,—and every person who shall, directly or indirectly, give or procure, or agree to give or procure, or offer, promise, or promise to procure, any office, &c. for any voter, in order to induce such voter to vote, or refrain from voting,—and every person who shall, directly or indirectly, make any such gift, loan, &c., in order to induce such person to endeavour to procure the return of any person to serve in parliament, or the vote of any voter at any election,—and every person who shall, in consequence of any such gift, loan, promise, &c., endeavour to procure the return of any person to serve in parliament, or the vote of any voter at any election,—and every person who shall advance money to any other person with the intent that such money or part thereof shall be expended in bribery at any election,—shall be deemed guilty of bribery misdemeanor, fine and imprisonment (*c*).

Being bribed.] Every voter who shall, before or during any election, directly or indirectly, receive or agree for any money, office, &c. for voting or refraining from voting at any election,—and every person who shall, after any election, directly or indirectly, receive any money, &c. on account of any person having voted or refrained from voting at any election,—shall be deemed guilty of bribery: misdemeanor, fine and imprisonment (*d*).

Using intimidation, &c.] Every person who shall, directly or indirectly, threaten to make use of any violence, or inflict any injury, damage, &c. against any person, in order to induce him

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(*a*) 1 Hawk. c. 67, s. 2.
(*b*) Id. s. 7.
(*c*) 17 & 18 Vict. c. 102, s. 2.
(*d*) Id. s. 3.

to vote or refrain from voting, or on account of his having voted or refrained from voting, or who shall, by abduction, duress, or any fraudulent contrivance, interfere with the free exercise of the franchise of any voter: misdemeanor, fine or imprisonment (*e*).

Costs of prosecution allowed (*f*).

As to the bribery of officers of the customs, see 3 & 4 W. 4, c. 51, s. 8.

BRIDGES.

Not repairing.] Counties are liable for the repair of all the public bridges within them respectively, in the same manner as parishes are liable to repair the public highways within them (*a*). And even where a portion of the county of Wilts in which there was a county bridge, was added to the city of New Sarum, by the Boundary Act, stat. 2 & 3 W. 4, c. 64,—the city not being a county of itself, but having a ne intromittant clause in its charter, and having a separate quarter sessions: the court held that the city was not liable to repair the bridge (*b*). A portion of a county, however, as a parish, &c. may be liable by custom to repair a particular bridge, or all bridges within it, in the same manner as a township or other district in a parish may by custom be liable to repair a highway (*c*). So an individual, by reason of his tenure of lands, or a corporation by prescription, may be liable to repair a public bridge (*d*). And there is no difference in this respect between horse, foot, and carriage bridges; if they be public bridges, the inhabitants of the county must repair them, unless they can show that others are bound to do so, *ratione tenuræ* or otherwise (*e*). As to bridges erected by individuals, &c., and by them afterwards dedicated to the public, it is enacted by stat. 43 G. 3, c. 59, s. 5, that no bridge thereafter to be built in any county at the expense of any private person or body politic or corporate, shall be deemed a county bridge, which the inhabitants of any county shall be compellable or liable to maintain or repair, unless such bridge shall be erected in a substantial and commodious manner,

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(*e*) 17 & 18 Vict. c. 102, s. 5.

(*f*) Id. s. 10.

(*a*) See *R.* v. *Derbyshire*, 2 Q. B. 745.

(*b*) *R.* v. *New Sarum*, 15 Law J. 15, m.

(*c*) *R.* v. *Hendon*, 4 B. & Ad. 628; and see *R.* v. *Adderbury, East*, 5 Q. B. 187; 13 Law J. 9, m.

(*d*) Co. Lit. 700. *R.* v. *Oswestry*, 5 M. & S. 361. And see *Baker* v. *Greenhill et al.*, 3 Q. B. 148.

(*e*) *R.* v. *Salop*, 13 East, 95. *R.* v. *Bucks*, 12 East, 192; and see *R.* v. *Derbyshire*, 11 Law J. 51, m.

under the direction or to the satisfaction of the county surveyor. And this Act has been holden to extend to a bridge erected by the trustees of a turnpike road (*f*).

Besides the repairing and maintaining of the bridge, the county are bound also to keep in repair 300 feet of the highway at each end of it (*g*). So, a corporation liable to repair a bridge by prescription, are liable to repair the approaches to it also (*h*). But in case of bridges hereafter to be built, and which shall be repairable by the county or a part thereof, all highways leading to, passing over and next adjoining to such bridge, shall be repaired by the parish, or person, &c., or trustees of a turnpike road, who were by law, before the erection of the said bridge, bound to repair the said highways; but the county, &c. shall repair the walls, banks or fences of the raised causeways and raised approaches to any such bridge, or the land arches thereof (*i*).

Where bridges are repairable by the county, the repairs are paid for out of the county-rate; and the justices at sessions, after indictment found, or presentment by the grand jury, as to the bridge being out of repair, may contract with any person for the repairs, or for keeping it in repair for a certain annual sum (*k*); or, the justices at the Easter sessions may appoint any two or more of their body, acting for a division near any such county bridge, to superintend the same, who may, on their own inspection, and without any indictment or presentment, order immediate repairs to the extent of 10*l*. (*l*); or the justices at sessions may authorize any person to make contracts for the repair of county bridges and the roads at the end of them, by the year, for any term not exceeding seven years, although such bridges be not presented or indicted (*m*). Also, justices at sessions may raise money by mortgage of the county-rate, for the purpose of repairing county bridges (*n*). And lastly, by stat. 5 & 6 W. 4, c. 50, s. 22, all powers and authorities vested by that Act in the surveyors of highways, for the getting of materials, and for the removing of all nuisances and annoyances, are also vested in the surveyor of county bridges and the road at the end thereof repairable therewith; and the several penalties, forfeitures, matters and things in that Act contained relating to highways, were thereby extended, as far as applicable, to such bridges and the roads at the end thereof. See *ante*, vol. 1, tit. "*Highway.*"

As to the repair of bridges in boroughs, see stat. 13 & 14 Vict. c. 64.

(*f*) *R.* v. *Derby*, 3 B. & Ad. 147.

(*g*) 22 H. 8, c. 5, s. 9.

(*h*) *R.* v. *Mayor of Lincoln*, 8 Ad. & El. 65.

(*i*) 5 & 6 W. 4, c. 50, s. 21.

(*k*) 12 G. 2, c. 29, s. 14.

(*l*) 52 G. 3, c. 110, ss. 1, 2.

(*m*) 55 G. 3, c. 143, s. 1.

(*n*) 4 & 5 Vict. c. 49.

Destroying or damaging them.] "If any person shall unlawfully and maliciously pull down or in anywise destroy any public bridge, or do any injury with intent and so as thereby to render such bridge or any part thereof dangerous or impassable:" felony, transportation for life, or for not less than seven years, or imprisonment with or without hard labour for not more than four years (*p*).

Commitment:—*On* ——, *at* ——, *unlawfully, maliciously, and feloniously did* [*pull down and destroy a certain public bridge there situate*, or if it were merely injured, state the injury done, *with intent thereby then and there to render the said bridge dangerous and impassable, and the said A. B. then and there did thereby render the same dangerous and impassable*]: *against the form of the statute in such case made and provided. And you the said keeper*, &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 517.

BROKER.

See "Agent."

BURGLARY AND HOUSEBREAKING.

Burglary.] Burglary: felony, transportation for life or not less than ten years, or imprisonment with or without hard labour for not more than three years (*a*).

Commitment:—*On* ——, *about the hour of eleven in the night, at* ——, *the dwelling-house of C. D., there situate, feloniously and burglariously did break and enter, with intent* [*the goods and chattels of the said C. D. in the said dwelling-house then and there being, then and there feloni-*

(*p*) 7 & 8 G. 4, c. 30, s. 13.

(*a*) 1 Vict. c. 86, s. 3.

ously and burglariously to steal, take, and carry away]; *and then and there in the said dwelling-house* [*one silver watch, of the goods and chattels of the said C. D., then and there feloniously and burglariously did steal, take, and carry away.*] *And you the said keeper*, &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 328.

Burglary and attempt to murder.] "Whosoever shall burglariously break and enter into any dwelling-house, and shall assault with intent to murder any person being therein, or shall stab, cut, wound, beat or strike any such person:" felony, death (*b*).

Commitment, same as the last form, merely adding, after the statement of the offence, the assault, or stabbing, &c., thus: *and that the said A. B. then and there in the said dwelling-house, in the night-time as aforesaid, feloniously did* [*assault one E. F. in the said dwelling-house then and there being, with intent in so doing him the said E. F. thereby then and there feloniously, wilfully, and of his malice aforethought to kill and murder*; or *stab, cut, and wound one E. F. in the said dwelling-house then and there being*]: *against the form of the statute in such case made and provided. And you the said keeper*, &c.

Principals in the second degree, and accessories before the fact, are punishable in the same way (*c*).

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 351.

Burglary by breaking out of a house.] "If any person shall enter the dwelling-house of another with intent to commit felony, or being in such dwelling-house shall commit felony, and shall in either case break out of the said dwelling-house in the night-time:" this is declared to be burglary (*d*).

The same facts which constitute a breaking in the ordinary case of burglary, such as lifting a latch, or the like, will be deemed a breaking within the meaning of this section (*e*).

Commitment:—*On* ——, *at* ——, *being in the dwelling-house of C. D. there situate, one silver watch of the goods and chattels of* [*the said C. D.*, or *one E. F.*] *in the said dwelling-house then and there being found, then and there in the said dwelling-house, feloniously did steal, take, and carry away; and that the said A. B. so being in the said*

(*b*) 1 Vict. c. 86, s. 2.
(*c*) 1 Vict. c. 86, s. 6.
(*d*) 7 & 8 G. 4, c. 29, s. 11.
(*e*) *R.* v. *Wheeldon*, 8 Car. & P. 747.

dwelling-house aforesaid, and having committed the felony aforesaid, on the day and year aforesaid, in the night of the same day, to wit, about the hour of eleven in the night of the same day, at —— aforesaid, feloniously and burglariously did break out of the said dwelling-house: against the form of the statute in such case made and provided. And you the said keeper, &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 342.

Burglary, what.] Burglary is the breaking and entering of the dwelling-house of another, in the night-time, with intent to commit a felony therein. And the night-time, as relates to burglary, commences at nine o'clock in the evening, and concludes at six in the morning (*f*).

As to the breaking: To constitute burglary, the breaking may be either an actual and forcible breaking of the door or window, or other part of the house, such as to admit of an entry into the dwelling-house (*g*); or it may be, by lifting the latch of the door, and thereby opening it (*h*); taking the glass out of a glass door (*i*); raising a trap door, which is kept down merely by its own weight (*k*); opening a window, which is shut down, although not fastened (*l*); or even by getting down the chimney (*m*). But entering at a place already open (*n*), or if a window be partly open, and the entry is effected by throwing a sash quite up (*o*), this is not such a breaking as is necessary to constitute burglary (*p*). The breaking, however, must be of some part of the dwelling-house; and therefore, unlocking an area gate (*q*), or the like, is not a breaking of the house, so as to constitute burglary. But it is not necessary, to constitute burglary, that the breaking should be actual; a constructive breaking, as where the burglar obtains an entry into the dwelling-house by some trick or artifice, or by threats (*r*). The breaking, also, must be in the night-time, that is to say, between nine o'clock in the evening and six in the morning (*s*).

As to the entry: an entry of any part of the person within the house will be sufficient, although the party be detected, or abandon his design, before he has had an opportunity of

(*f*) 1 Vict. c. 86, s. 4.

(*g*) *R.* v. *Hughes*, 2 East, P. C. 491. *R.* v. *John Smith*, R. & Ry. 417. *R.* v. *Perkes*, 1 Car. & P. 300.

(*h*) *R.* v. *Jordan et al.*, 7 Car. & P. 432. And see *Pugh* v. *Griffith*, 7 Ad. & El. 836.

(*i*) *R.* v. *Smith*, R. & Ry. 417.

(*k*) *R.* v. *Russell*, Ry. & M. 377.

(*l*) *R.* v. *Hyams*, 7 Car. & P. 441. *R.* v. *Haines and Harrison*, R. & Ry. 451. And see *R.* v. *Hall*, R. & Ry. 355.

(*m*) *R.* v. *Brice*, R. & Ry. 450.

(*n*) *R.* v. *Lewis*, 2 Car. & P. 628.

(*o*) *R.* v. *Henry Smith*, Ry. & M. 178. See *R.* v. *Robinson*, Ry. & M. 327.

(*p*) And see *R.* v. *Johnson et al.*, Car. & M. 218.

(*q*) *R.* v. *Davis*, R. & Ry. 322.

(*r*) Arch. New Cr. Law, 331, and the authorities there cited.

(*s*) 1 Vict. c. 86, s. 4.

effecting the felony intended (*s*). And therefore where a shop window, within which there were watches and jewellery, was broken by the prisoner thrusting his finger through it, and the finger was seen on the other side, the judges held this to be a sufficient entry to constitute burglary (*t*). The entry must be in the night-time; but it is not necessary that it should be on the same night as the breaking; where a breaking with intent to enter was effected on Friday night, and the entry was not until the Sunday night following, the judges held it to be burglary (*u*).

The house must be a dwelling-house, that is to say, a house in which the occupier or his family usually sleep at night. And if a shop or counting-house, part of a dwelling-house, and communicating with it, be broken and entered in the night-time, it may be alleged to be a burglary in the dwelling-house (*x*). So, all outhouses, within the same curtilage (that is to say, the common fence including the dwelling-house and its offices), occupied and immediately connected and communicating with the actual dwelling-house, may be the subject of burglary, and the burglary in such cases may be alleged to have been in the dwelling-house. Formerly this was the case with respect to all buildings within the curtilage. But by stat. 7 & 8 G. 4, c. 29, s. 13, no building, although within the same curtilage with the dwelling-house, and occupied with it, shall be deemed to be part of such dwelling-house for the purpose of burglary, unless there shall be a communication between such building and dwelling-house, either immediate or by means of a covered and inclosed passage leading from the one to the other (*y*). If the house be occupied by servants only, it should in general be described as the dwelling-house of the master (*z*); if by lodgers only, then the apartments of each lodger may be described as his dwelling-house (*a*); if both by lodgers and the landlord or his servant, then if they have but one common entrance, the whole may be described as the dwelling-house of the landlord (*b*); but if there be separate entrances, and there be no internal communication between the part occupied by the lodgers and that occupied by the landlord, the former may be described as the dwelling-house of the lodgers respectively, and the latter as that of the landlord, if he or his servants reside in it (*c*). If the house be

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(*s*) *R.* v. *Bayley*, R. & Ry. 341.

(*t*) *R.* v. *John Davis*, R. & Ry. 499.

(*u*) *R.* v. *John Smith*, R. & Ry. 417.

(*x*) *R.* v. *Gibbons and Kew*, R. & Ry. 442. *R.* v. *Stocket et al.*, Id. 185.

(*y*) See *R.* v. *Burrowes*, R. & Ry. 274. *R.* v. *Jenkins*, Id. 244.

(*z*) *R.* v. *Stack*, R. & Ry. 185. *R.* v. *Rawlins et al.*, 7 Car. & P. 150.

(*a*) *R.* v. *John Bayley*, Ry. & M. 23. *R.* v. *Trapshaw*, 1 Leach, 427.

(*b*) *R.* v. *Gibbons and Kew*, R. & Ry. 442.

(*c*) Arch. New Cr. Law, 336.

occupied by a married woman, it must be described as the dwelling-house of the husband, although he be separated from her (*d*). A mistake, however, in the ownership of the houses, will not affect the validity of the warrant.

As to the intent: the intent usually laid and proved is to commit a larceny; but it may be, to commit any other felony (*e*).

Breaking and entering a church or chapel.] "If any person shall break and enter any church or chapel, and steal therein any chattel, or having stolen any chattel in any church or chapel, shall break out of the same:" felony (*f*), transportation for life or not less than seven years, or imprisonment with or without hard labour for not more than three years, and solitary confinement during any portion of the imprisonment (*g*). The chapels of dissenters are holden not to be within this enactment (*h*).

Commitment:—*On ——, at ——, the church of the said parish* [or *a certain chapel*] *there situate feloniously did break and enter, and* [*one silver cup*], *of the chattels of the parishioners of the said parish, feloniously and sacrilegiously did steal, take, and carry away: against the form of the statute in such case made and provided. And you the said keeper*, &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 350.

Commitment for stealing and then breaking out, may readily be framed from this form, and the form, *ante*, p. 57 (*i*).

Housebreaking.] "If any person shall break and enter any dwelling-house, and steal therein any chattel, money, or valuable security, to any value whatever:" felony (*k*), transportation for not more than fifteen years nor less than ten, or imprisonment with or without hard labour for not more than three years (*l*). No building, though within the same curtilage with the dwelling-house, and occupied therewith, shall be deemed a part of such dwelling-house for the purpose aforesaid, unless there shall be a communication between such building and dwelling-house, either immediate, or by means of a covered and inclosed passage leading from the one to

(*d*) *R.* v. *French*, R. & Ry. 491. *R.* v. *Wilford et al.*, Id. 517.
(*e*) Arch. New Cr. Law, 340.
(*f*) 7 & 8 G. 4, c. 29, s. 10.
(*g*) 6 W. 4, c. 4.
(*h*) *R.* v. *Nixon and Scroop*, 7 Car. & P. 442. *R.* v. *Warren and Spencer*, 6 Id. 335, n.
(*i*) See Arch. New Cr. Law, 350, 352.
(*k*) 7 & 8 G. 4, c. 29, s. 12.
(*l*) 1 Vict. c. 90, s. 1. See *Whitehead* v. *R.*, 14 Law J. 165, m.

the other (*m*). Any the slightest removal of the goods from one part of the house to another, although the party be interrupted or detected before he has time to carry them off, will be sufficient to complete the larceny, in this as in ordinary cases (*n*). The house must be a dwelling-house, as in burglary (*o*).

Commitment:—*On ——, at ——, the dwelling-house of C. D. there situate, feloniously did break and enter, and two pewter dishes, of the goods and chattels of the said C. D., in the said dwelling-house then and there being, then in the said dwelling-house, feloniously did steal, take and carry away: against the form of the statute in such case made and provided. And you the said keeper*, &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 347.

Breaking and entering a house in the day-time, with intent to steal, but no larceny actually committed, is a misdemeanor punishable with fine, or imprisonment, or both (*p*). The commitment may be thus:—*On ——, at ——, the dwelling-house of C. D., there situate, unlawfully did break and enter, with intent then and there and therein divers goods and chattels, in the said dwelling-house then and there being, feloniously to steal, take and carry away. And you the said keeper*, &c. It is not necessary to state whose goods they were (*q*).

Breaking and entering a building within the curtilage.] "If any person shall break and enter any building, and steal therein any chattel, money, or valuable security, such building being within the curtilage of a dwelling-house, and occupied therewith, but not being part thereof, according to the provision hereinbefore mentioned," [that is to say, there being no communication between such building and dwelling-house, either immediate, or by means of a covered and inclosed passage leading from the one to the other] (*r*): felony (*s*), transportation for not more than fifteen years, nor less than ten, or imprisonment with or without hard labour for not more than three years (*t*).

Commitment:—*On ——, at ——, a certain building of C. D. there situate, feloniously did break and enter (the said building being then within the curtilage of the dwelling-house*

(*m*) 7 & 8 G. 4, c. 29, s. 13.
(*n*) *R.* v. *Amier*, 6 Car. & P. 344.
(*o*) See *ante*, p. 59.
(*p*) See stat. 14 & 15 Vict. c. 100, s. 9. Arch. New Cr. Law, 628, 348.
(*q*) *R.* v. *Lawes et al.*, 1 Car. & K. 62.
(*r*) See 7 & 8 G. 4, c. 29, s. 13, *ante*, p. 59.
(*s*) 7 & 8 G. 4, c. 29, s. 14.
(*t*) 1 Vict. c. 90, s. 2. See *R.* v. *Gilbert et al.*, 1 Car. & K. 84.

of the said C. D. there situate, and by the said C. D. then and there occupied therewith, and there being then and there no communication between the said building and the said dwelling-house, either immediate, or by means of any covered and inclosed passage leading from the one to the other); and the said A. B. then and there, in the said building, [*one silver watch,*] *of the goods and chattels of the said C. D., in the said building then being found, then in the said building feloniously did steal, take and carry away: against the form of the statute in such case made and provided. And you the said keeper,* &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 344.

Breaking and entering a shop, warehouse, &c.] "If any person shall break and enter any shop, warehouse, or counting-house (*u*), and steal therein any chattel, money, or valuable security;" felony (*x*), transportation for not more than fifteen years nor less than ten, or imprisonment with or without hard labour for not more than three years (*y*). Where a blacksmith, who also dealt in coals, had a room beyond his workshop for holding his coals, and persons wishing to purchase, went to this room for the purpose: a person being indicted for stealing coals from this place, as from a shop, Alderson, B., held that this was not a shop within the meaning of stat. 7 & 8 G. 4, c. 29, s. 15; a workshop, such as a blacksmith's or carpenter's shop, was holden not to be within the Act (*z*). But this has since been ruled otherwise, by Ld. Denman, C. J. (*a*).

Commitment:—*On* ——, *at* ——, *the shop of C. D. there situate, feloniously did break and enter, and two silk handkerchiefs, of the value of two shillings, of the goods and chattels of the said C. D., in the said shop then and there being, then and there in the said shop feloniously did steal, take, and carry away: against the form of the statute in such case made and provided. And you the said keeper,* &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 348.

Being armed, &c., with intent to break and enter.] "If any person shall be found by night armed with any dangerous or offensive weapon or instrument whatsoever, with intent to break or enter into any dwelling-house or other building

(*u*) See *R.* v. *Potter*, 20 Law J. 170, m.

(*x*) 7 & 8 G. 4, c. 29, s. 15.

(*y*) 1 Vict. c. 90, s. 2.

(*z*) *R.* v. *Saunders*, 9 Car. & P. 79.

(*a*) *R.* v. *Carter*, 1 Car. & K. 173.

whatsoever, and to commit any felony therein;—or if any person shall be found by night, having in his possession without lawful excuse (the proof of which excuse shall lie on such person) any picklock key, crow, jack, bit, or other implement of housebreaking;—or if any person shall be found by night having his face blackened or otherwise disguised, with intent to commit any felony;—or if any person shall be found by night in any dwelling-house or other building whatsoever with intent to commit any felony therein:—every such offender shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned with or without hard labour for any time not exceeding three years (*b*)."

There are four offences defined here. The following may be the forms of the commitments:—

Commitment for being armed, &c.]—*On* ——, *at* ——, *was found by night, armed with a dangerous and offensive weapon, to wit* ——, *with intent then to break and enter a dwelling-house and to commit a felony therein. And you the said keeper*, &c.

Commitment for having picklock keys, &c.:—*On* ——, *at* ——, *was found by night, having in his possession, without lawful excuse, twenty picklock keys, and divers implements of housebreaking, to wit* ——. *And you the said keeper*, &c.

It is not necessary in this case that the keys should be skeleton keys; if they be such as are capable, from their nature, of being used for the purpose of house-breaking, and it appear that they were intended to be so used, they may be deemed picklock keys within the meaning of the statute (*c*). It is not necessary in the commitment, or in an indictment for this offence, to state with what intent the prisoner had the keys (*d*).

Commitment for being disguised, &c.:—*On* ——, *at* ——, *was found by night, having then his face blackened, with intent there to commit a felony. And you the said keeper*, &c.

Commitment for being found in a house, with intent, &c.:—*On* ——, *at* ——, *was found by night in the dwelling-house of A. B., situate at* ——, *with intent to commit a felony therein. And you the said keeper*, &c.

See the forms of indictments for these offences, and the evidence necessary to support them, *Arch. New Cr. Law*, 353.

(*b*) 14 & 15 Vict. c. 19, s. 1.

(*c*) *R.* v. *Oldham*, 21 Law J. 134, m.

(*d*) *R.* v. *Bailey*, 23 Law J. 13, m.

BURIAL.

See "Dead Bodies."

BURNING.

(*See post, tit. "Malicious Injuries."*)

Church or chapel.] "Whosoever shall unlawfully and maliciously set fire to any church or chapel, or to any chapel for the religious worship of persons dissenting from the united church of England and Ireland:" felony, transportation for life, or not less than fifteen years, or imprisonment with or without hard labour for not more than three years (*a*).

Commitment:—*On* ——, *at* ——, *unlawfully, maliciously, and feloniously did set fire to a certain* [*church*] *there situate: against the form of the statute in such case made and provided. And you the said keeper*, &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 493.

Dwelling-house, any person being therein.] "Whosoever shall unlawfully and maliciously set fire to any dwelling-house, any person being therein:" felony, death (*b*).

Commitment:—*On* ——, *at* ——, *unlawfully, maliciously, and feloniously did set fire to a certain dwelling-house of C. D. there situate, one E. F. being, at the time of the committing of the said felony, in the said dwelling-house: against the form of the statute in such case made and provided. And you the said keeper*, &c.

(*a*) 1 Vict. c. 89, s. 3.

(*b*) Id. s. 2.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 489.

House, outhouse, manufactory, &c.] Whosoever shall, "unlawfully and maliciously set fire to any house, stable, coach-house, outhouse, warehouse, office, shop, mill, malthouse, hopoast, barn or granary, or to any building or erection used in carrying on any trade or manufacture, or any branch thereof, whether the same or any of them respectively shall then be in the possession of the offender, or in the possession of any other person, with intent thereby to injure or defraud any person:" felony, transportation for life, or not less than fifteen years, or imprisonment with or without hard labour, for not more than three years (*c*). The word "house" here, seemingly means a dwelling-house only (*d*). And therefore where a building erected, not for habitation, but for workmen to take their meals and dry their clothes in, which had a roof, a door, but no windows, was holden not to be a house, within the meaning of this section, although a person slept in it with the knowledge, but without the permission, of the owner (*e*). As to what shall be deemed an outhouse, see *Arch. New Cr. Law*, 486, and *R.* v. *Winter*, R. & Ry. 295. *R.* v. *Ellison and Vines*, Ry. & M. 336. *R.* v. *Haughton*, 5 Car. & P. 555. *R.* v. *Parrott*, 6 Id. 402. A pig-stye, in an inclosed yard at the back of the dwelling-house, has been deemed an outhouse within the Act (*f*). And as to what shall be deemed a setting fire to a house, &c., see *R.* v. *Parker* 9 Car. & P. 45. *R.* v. *Russell*, Car. & M. 541.

Commitment:—*On* ——, *at* ——, *unlawfully, maliciously, and feloniously did set fire to a certain* [*dwelling-house*] *of C. D. there situate, with intent then and there* [*to injure the said C. D.*, or *to defraud a certain insurance company called* ——]: *against the form of the statute in such case made and provided. And you the said keeper*, &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 485.

Farm buildings.] Whoever shall "unlawfully and maliciously set fire to any hovel, shed or fold, or to any farm building, or any building or erection used in farming land, whether the same or any of them respectively shall then be in the possession of the offender or in the possession of any other person,—with intent thereby to injure or defraud any person:" felony, transportation for life, or for not less than fifteen years,

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(*c*) 1 Vict. c. 89, s. 3.
(*d*) Arch. New Cr. Law, 486.
(*e*) *R.* v. *England et al.*, 1 Car. & K. 533.
(*f*) *R.* v. *James*, 1 Car. & K. 303.

or imprisonment [with or without hard labour (*g*)], for not more than three years (*h*); and if the offender be a male under the age of eighteen, the court in their discretion may also adjudge him to be publicly or privately whipped, in such manner, and as often (not exceeding thrice), as they shall direct (*i*).

Commitment:—*On* ——, *at* ——, *unlawfully, maliciously, and feloniously did set fire to a certain* [*farm building, to wit, a cart-house*] *of C. D. there situate, with intent thereby then and there* [*to injure the said C. D.*; or *to defraud a certain insurance company called* ——]: *against the form of the statute in such case made and provided. And you the said keeper*, &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 491.

Hay, straw, implements, &c. in farm buildings.] Whoever shall "unlawfully and maliciously set fire to any hay, straw, wood, or other vegetable produce, being in any farm house or farm building, or to any implement of husbandry, being in any farm house or farm building,—with intent thereby to set fire to such farm house or farm building, and to injure or defraud any person:"—the same punishment as for unlawfully and feloniously setting fire to the said farm house or farm building, with intent thereby to injure or defraud such person (*k*).

Commitment:—*On* ——, *at* ——, *unlawfully, maliciously, and feloniously did set fire to certain* [*hay*], *the same being then and there in a certain* [*farm building, to wit, a* ——] *of C. D. there situate, with intent thereby then and there to set fire to the said farm buildings, and then and there* [*to injure the said C. D.*, or *to defraud a certain insurance company called* ——]: *against the form of the statute in such case made and provided. And you the said keeper*, &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 492.

Stacks of corn, hay, wood, &c.] "Whosoever shall unlawfully and maliciously set fire to any stack of corn, grain, pulse, tares, straw, haulm, stubble, furze, heath, fern, hay, turf, peat, coals, charcoal or wood, or any steer of wood:" felony, transportation for life, or not less than fifteen years, or

(*g*) See sect. 3, and 1 Vict. c. 89, s. 12.

(*h*) 7 & 8 Vict. c. 62, s. 1.

(*i*) 7 & 8 Vict. c. 62, s. 3.

(*k*) Id. s. 2.

imprisonment with or without hard labour for not more than three years(*a*). Beans have been holden to be "pulse," within the meaning of the Act (*b*).

Commitment: —*On* ——, *at* ——, *unlawfully, maliciously, and feloniously did set fire to a certain stack of* [*wheat*], *the property of C. D., then and there being: against the form of the statute in such case made and provided. And you the said keeper*, &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 503.

Crops of corn or pulse, trees, furze, &c.] "If any person shall unlawfully and maliciously set fire to any crop of corn, grain or pulse, whether standing or cut down, or to any part of a wood, coppice or plantation of trees, or to any heath, gorze, furze or fern, wheresoever the same may be growing:" felony, transportation for seven years, or imprisonment with or without hard labour for not more than two years(*c*).

Commitment:—*On* ——, *at* ——, *unlawfully, maliciously, and feloniously did set fire to a certain* [*crop of wheat*], *the property of C. D., then and there standing and growing: against the form of the statute in such case made and provided. And you the said keeper*, &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 502.

Coal mines.] "Whosoever shall unlawfully and maliciously set fire to any mine of coal or cannel-coal:" felony, transportation for life, or not less than fifteen years, or imprisonment with or without hard labour for not more than three years (*d*).

Commitment:—*On* ——, *at* ——, *unlawfully, maliciously, and feloniously did set fire to a certain mine of* [*coal*] *of C. D. and others there situate: against the form of the statute in such case made and provided. And you the said keeper*, &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 507.

Ships, whereby life endangered, &c.] "Whosoever shall unlawfully and maliciously set fire to, cast away, or in anywise destroy any ship or vessel, either with intent to murder any

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(*a*) 1 Vict. c. 89, s. 10.

(*b*) *R.* v. *Woodward*, Ry. & M. 323.

(*c*) 7 & 8 G. 4, c. 30, s. 17.

(*d*) 1 Vict. c. 89, s. 9.

person, or whereby the life of any person shall be endangered:" felony, death (*e*). Patteson, J., inclined to think that a pleasure-boat, eighteen feet long, was a vessel within the meaning of the Act (*f*). In another case, Alderson, B., doubted whether a barge was so (*g*).

Commitment:—*On* ——, *at* ——, *unlawfully, maliciously, and feloniously did* [*set fire to*] *a certain ship called the* ——, *the property of C. D.* [*upon the high seas*] *then and there being,* [*with intent in so doing, one E. F. then and there feloniously, wilfully, and of his malice aforethought to kill and murder,* or *whereby the life of one E. F. was then and there greatly endangered*] : *against the form of the statute in such case made and provided. And you the said keeper,* &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 525.

Ships, with intent to destroy them.] "Whosoever shall unlawfully and maliciously set fire to, or in anywise destroy any ship or vessel, with intent thereby to prejudice any owner or part owner of such ship or vessel, or of any goods on board the same, or any person that hath underwritten or shall underwrite any policy of insurance upon such ship or vessel, or on the freight thereof, or upon any goods on board the same:" felony, transportation for life, or not less than fifteen years, or imprisonment with or without hard labour for not more than three years (*h*). As to the meaning of the word "vessel," *vide supra.*

Commitment:—*On* ——, *at* ——, *unlawfully, maliciously, and feloniously did* [*set fire to*] *a certain ship called the* ——, *the property of C. D.* [*upon the high seas then and there being*], *with intent thereby then and there to prejudice* [*the said C. D. the owner thereof,* or *one E. F. the owner of certain goods on board thereof,* or *one G. H. and J. K., who had before then severally underwritten a certain policy of insurance upon* ——] : *against the form of the statute in such case made and provided. And you the said keeper,* &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 526.

(*e*) 1 Vict. c. 89, s. 4.

(*f*) *R.* v. *Bowyer et al.*, 4 Car. & P. 559.

(*g*) *R.* v. *Smith*, 4 Car. & P. 569.

(*h*) 1 Vict. c. 89, s. 6.

BUYING OF TITLES.

Buying a disputed title to lands, with intent that the purchaser shall commence or carry on the suit, is a misdemeanor at common law (z). And by stat. 32 H. 8, c. 9, the seller shall forfeit the lands; and the purchaser the value thereof, one-half to the king, and the other to the informer, to be recovered by action, &c.

CANAL.

See "Larceny," "Malicious Injuries."

CARNALLY KNOWING FEMALE CHILDREN.

Under ten.] "If any person shall unlawfully and carnally know and abuse any girl under the age of ten years:" felony (*a*), transportation for life (*b*), although the girl consent to it. The carnal knowledge shall be deemed complete, upon proof of penetration only, without proof of emission (*c*); or, even although the emission be negatived by the evidence (*d*). And any penetration, however trifling, will be sufficient to constitute the offence (*e*). In one case, indeed, Gurney, B., held, that if the penetration were not sufficient to rupture the hymen, it would not be sufficient to constitute the offence. But this has since been ruled otherwise, and that rupturing the hymen is not at all necessary to the proof of penetration (*f*). And in *R.* v. *Jordan et al.*, 9 *Car. & P.* 118, Williams, J., held that it was not necessary that the hymen should be ruptured, to constitute carnal knowledge of a girl.

Commitment:—*On ——, at ——, feloniously did assault one C. D., a girl under the age of ten years, to wit, of the age of nine years, and her the said C. D. then and there*

(z) 1 Hawk. c. 86, s. 1,
(a) 9 G. 4, c. 31, s. 17.
(b) 4 & 5 Vict. c. 56, s. 3.
(c) 9 G. 4, c. 31, s. 18.
(d) *R.* v. *Cox*, Ry. & M. 337. *R.* v. *Gammon*, 5 Car. & P. 321.
(e) *R.* v. *Lines*, 1 Car. & K. 393.
(f) *R.* v. *Hughes*, 9 Car. & P. 752. And see *R.* v. *M'Rue*, 8 Car. & P. 641.

feloniously did unlawfully and carnally know and abuse: against the form of the statute in such case made and provided. And you the said keeper, &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 311.

As to an assault with intent to commit this offence see *ante*, p. 36, "*Assault with intent to commit a felony.*"

Above ten and under twelve.] "If any person shall unlawfully and carnally know and abuse any girl, being above the age of ten years and under the age of twelve years:" misdemeanor, imprisonment, with or without hard labour, for such term as the court shall award (*g*), This is to be understood of cases where the girl consents to the act; if it be done without her consent, it is rape, and punishable accordingly (*h*). Where a man was indicted for carnally knowing a girl between the ages of ten and twelve, and in other counts for an assault with intent to do so, and with a common assault, and the evidence only proved an attempt to have carnal knowledge which hurt the girl, but which appeared to have been done perfectly with the girl's consent: the judges held that the prisoner could not be convicted of the assault with intent, &c., or of the common assault; it being done with the girl's consent, it could not be deemed an assault; but that the prisoner might have been indicted for a misdemeanor, in attempting to commit the offence (*i*). A girl's merely submitting to such an outrage, however, is not to be deemed conclusive of her consent to it, as it might in the case of a woman or adult girl, but the jury will have to judge from the facts of the case, whether she consented willingly, or merely submitted to it from fear; and if the latter, the prisoner may be convicted on an indictment as for a common assault (*k*). As to what amounts to carnal knowledge, within the meaning of the statute, see *ante*, p. 69.

Commitment:—*On* ——, *at* ——, *unlawfully did assault one C. D., a girl above the age of ten years, and under the age of twelve years, to wit, of the age of eleven years, and her the said C. D. then and there did unlawfully and carnally know and abuse: against the form of the statute in such case made and provided. And you the said keeper,* &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 312.

(*g*) 9 G. 4, c. 31, s. 17.
(*h*) See *R.* v. *Neale*, 1 Car. & K. 591.
(*i*) *R.* v. *Martin*, 9 Car. & P. 213. And see Id. 215. And *R.* v. *Read et al.*, 18 Law J. 88, m.
(*k*) *R.* v. *Day*, 9 Car. & P. 722, per Coleridge, J.

An attempt to commit this offence is also a misdemeanor, and punishable with fine or imprisonment, or both.

CATTLE.

Stealing, or killing with intent to steal.] "If any person shall steal any horse, mare, gelding, colt, or filly, or any bull, cow, ox, heifer, or calf, or any ram, ewe, sheep or lamb;—or shall wilfully kill any of such cattle, with intent to steal the carcass or skin, or any part of the cattle so killed:"—felony (*a*), transportation for not more than fifteen years, nor less than ten years, or imprisonment for not more than three years (*b*). The word "sheep" here includes wethers, rig sheep (*c*), and every other description of sheep not coming within the terms "ram," "ewe," and "lamb" (*d*). As to the stealing, see *post*, tit. "*Larceny.*" Where a man cut the throat of an ewe, with intent to steal the carcass, but was interrupted before he actually killed it, and it afterwards lived for two days; being convicted upon this statute, the judges held the conviction to be right (*e*).

Commitment for stealing:—*On* ——, *at* ——, *one gelding* [or as the case may be], *of the goods and chattels of one C. D., feloniously did steal, take, and drive away. And you the said keeper*, &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 398.

Commitment for killing with intent to steal:—*On* ——, *at* ——, *one ewe* [or as the case may be], *of the goods and chattels of one C. D., wilfully and feloniously did kill, with intent then and there feloniously to steal, take and carry away the carcass* [or *the skin*, or *a certain part of the carcass, that is to say, the inward fat*] *of the said ewe: against the form of the statute in such case made and provided. And you the said keeper*, &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 401.

(*a*) 7 & 8 G. 4, c. 29, s. 25.
(*b*) 1 Vict. c. 90, s. 1.
(*c*) *R.* v. *Stroud*, 6 Car. & P. 535.
(*d*) See Arch. New Cr. Law, 400; and see *R.* v. *Spicer*, 1 Car. & K. 699.
(*e*) *R.* v. *Sutton*, 8 Car. & P. 291.

Maliciously killing or wounding] "If any person shall unlawfully and maliciously kill, maim, or wound any cattle:" felony (*f*), transportation for not more than fifteen nor less than seven years, or imprisonment with or without hard labour for not more than three years (*g*). Asses are cattle within the meaning of this Act (*h*); so are pigs (*i*); so are sheep, oxen, cows, horses, &c. To constitute a wounding within the meaning of this Act, it is not necessary that it should create a permanent injury (*k*); but to constitute a maiming it must (*l*). Where a man wilfully set fire to a cow-house, and a cow in it was thereby burnt to death, Taunton, J., held it to be a killing of the cow within the meaning of this Act (*m*) But where a man set a dog at a sheep, and the sheep was thereby wounded, Park, J., held that this was not an offence within this Act (*n*). It is not necessary that the offence should be committed from any malice towards the owner of the cattle (*o*); if it appear that the prisoner did the act purposely, he may be deemed to have done it maliciously.

Commitment:—*On* ——, *at* ——, *one bay mare, the property of C. D. unlawfully, maliciously, and feloniously did kill* [or as the case may be]: *against the form of the statute in such case made and provided. And you the said keeper*, &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 523.

CHALLENGE TO FIGHT.

It is a very high offence to challenge another, either by word or letter, to fight a duel,—or to be the messenger of such a challenge (*a*),—or even barely to provoke another to send a challenge or to fight, by dispersing letters to that purpose, full of reflections, and insinuating a desire to fight, &c. (*b*). This offence is punishable by fine or imprisonment, or both.

It is also a misdemeanor at common law, punishable in like manner, to provoke a man to any other breach of the peace, either by letter or otherwise.

Challenging or provoking a person to fight, on account of money won at play, was formerly punishable with imprison-

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(*f*) 7 & 8 G. 4, c. 30, s. 16.
(*g*) 1 Vict. c. 90, s. 2.
(*h*) *R.* v. *Whitney*, Ry. & M. 3.
(*i*) *R.* v. *Sarah Chapple*, R. & Ry. 77.
(*k*) *R.* v. *Haywood*, R. & Ry. 16.
(*l*) *R.* v. *Jeans*, 1 Car. & K. 539.
(*m*) *R.* v. *Haughton*, 5 Car. & P. 559.
(*n*) *R.* v. *Hughes*, 2 Car. & P. 420.
(*o*) 7 & 8 G. 4, c. 30, s. 25. *R.* v. *Tivey*, 1 Car. & K. 704.
(*a*) 1 Hawk c. 63, s. 3.
(*b*) Id. *R.* v. *Phillips*, 6 East, 464. *R.* v. *Rice*, 3 East, 581.

ment for two years, and a forfeiture of goods and chattels, by stat. 9 Anne, c. 14, s. 8; but this part of the statute has since been repealed, by stat. 9 G. 4, c. 31, s. 1.

Commitment for provoking to fight, or to send a challenge:—*On ——, at ——, wickedly, wilfully and maliciously did utter, pronounce, declare and say to and in the presence and hearing of one C. D., certain provoking and scandalous words, with intent to instigate, incite, and provoke the said C. D. to [fight a duel with and against him the said A. B.,* or *to send a challenge to him the said A. B. to fight a duel with and against him the said C. D.] And you the said keeper,* &c.

Commitment for sending a challenge:—*On ——, at ——, wickedly, wilfully and maliciously did write, send and deliver to one C. D., a certain letter and paper writing containing a challenge to fight a duel with and against him the said A. B. And you the said keeper,* &c.

CHAPEL.

See "Burglary," "Burning."

CHEATING.

See "False Pretences."

CHILD STEALING.

"If any person shall maliciously, either by force or fraud, lead or take away, or decoy or entice away, or detain, any child under the age of ten years, with intent to deprive the parent or parents, or any other person having the lawful care or charge of such child, of the possession of such child, or with intent to steal any article upon or about the person of such child, to whomsoever such ariticle may belong; or if any person shall, with any such intent as aforesaid, receive or harbour any such child, knowing the same to have been by force or fraud led, taken, decoyed, enticed away or detained, as hereinbefore mentioned:" felony, transportation for seven years; or imprisonment with or without hard labour for not more than two years, and whipping (*c*).

(*c*) 9 G. 4, c. 31, s. 21.

Commitment:—*On* ——, *at* ——, *a certain male child, under the age of ten years, to wit, of the age of eight years, named E. D., the son of C. D., then and there, feloniously and maliciously by force and fraud, did lead, take and carry away, with intent [to deprive the said C. D., the parent of the said child, of the possession of the said child;* or *with intent one woollen cloth waistcoat of the value of* ——, *and one pair of woollen cloth trousers of the value of* ——, *upon and about the person of the said child then and there being, and the property of the said C. D., feloniously to steal, take and carry away]: against the form of the statute in such case made and provided. And you the said keeper*, &c.

It is provided, however, that no person claiming to be father of an illegitimate child, or to have any right to the possession of it, shall be prosecuted under this Act, for getting possession of such child, or taking it out of the possession of the mother or other person (*d*).

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 209.

CHLOROFORM, USING, FOR THE PURPOSE OF COMMITTING A FELONY.

See "Larceny from the Person."

CHURCH.

See "Burglary," "Burning."

CLERKS.

See "Embezzlement," "Larceny."

CLERGYMEN, ARRESTING.

" If any person shall arrest any clergyman upon any civil process, while he shall be performing divine service, or shall,

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(*d*) 9 G. 4, c. 31, s. 21.

with the knowledge of such person, be going to perform the same, or returning from the performance thereof:" misdemeanor, fine or imprisonment, or both (*e*).

COAL MINES.

See "Burning," Larceny," "Malicious Injuries."

COGNOVIT.

See "Personating."

COIN.

Counterfeiting gold or silver coin.] "If any person shall falsely make or counterfeit any coin, resembling, or apparently intended to resemble or pass for, any of the King's current gold or silver coin:" felony, transportation for life or not less than seven years, or imprisonment with or without hard labour for not more than four years; and every such offence shall be deemed to be complete, although the coin so made or counterfeited shall not be in a fit state to be uttered, or the counterfeiting thereof shall not be finished or perfected (*f*).

Commitment:—*On ——, at ——, feloniously did falsely make and counterfeit ten pieces of coin, [resembling and] ap-*

(*e*) 9 G. 4, c. 31, s. 23. (*f*) 2 W. 4, c. 34, s. 3.

parently intended to resemble and pass for certain of the Queen's current [gold] coin called [sovereigns]: against the form of the statute in such case made and provided. And you the said keeper, &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 571.

Gilding or silvering coin.] "If any person shall gild or silver, or shall, with any wash or materials capable of producing the colour of gold or of silver, wash, colour, or case over, *any coin* whatsoever resembling or apparently intended to resemble or pass for any of the King's current gold or silver coin;—or if any person shall gild or silver, or shall, with any wash or materials capable of producing the colour of gold or of silver, wash, colour, or case over, *any piece of silver or copper*, or of coarse gold or silver, or of any metal or mixture of metals respectively, being of a fit size and figure to be coined, and with intent that the same shall be coined, into false and counterfeit coin resembling or apparently intending to resemble or pass for any of the King's current gold or silver coin;—or if any person shall gild, or shall, with any wash or materials capable of producing the colour of gold, wash, colour, or case over, any of the King's current *silver coin*, or file or in any manner alter such coin, with intent to make the same resemble or pass for any of the King's current gold coin;—or if any person shall gild or silver, or shall, with any wash or materials capable of producing the colour of gold or of silver, wash, colour, or case over, any of the King's current *copper coin*, or file or in any manner alter such coin, with intent to make the same resemble or pass for any of the King's current gold or silver coin:" felony, transportation for life or for not less than seven years, or imprisonment with or without hard labour for not more than four years (*g*).

Commitment:—*On* ——, *at* ——, *feloniously did gild a certain piece of coin, [resembling and] apparently intended to resemble certain of the Queen's current gold coin called a half-sovereign: against the form of the statute in such case made and provided. And you the said keeper*, &c. Commitments for the other offences in the above section may readily be framed from this form.

Impairing the coin.] "If any person shall impair, diminish, or lighten any of the King's current gold or silver coin, with intent to make the coin so impaired, diminished, or lightened pass for the King's current gold or silver coin:" felony, trans-

(*g*) 2 W. 4, c. 34, s. 4.

portation for not more than fourteen years nor less than seven, or imprisonment with or without hard labour for not more than three years (*h*).

Commitment:—*On* ——, *at* ——, *feloniously did impair, diminish, and lighten six pieces of the Queen's current* [*gold*] *coin called* [*sovereigns*], *with intent thereby then and there feloniously to make the said pieces of coin, so impaired, diminished, and lightened, to pass for the Queen's said current gold coin called sovereigns, as aforesaid: against the form of the statute in such case made and provided. And you the said keeper*, &c.

Buying, selling, or importing counterfeit coin.] "If any person shall buy, sell, receive, pay or put off, or offer to buy, sell, receive, pay, or put off, any false or counterfeit coin resembling, or apparently intended to resemble or pass for, any of the King's current gold or silver coin, at or for a lower rate or value than the same by its denomination imports or was coined or counterfeited for;—or if any person shall import into the United Kingdom from beyond the seas any false or counterfeit coin resembling, or apparently intended to resemble or pass for, any of the King's current gold or silver coin, knowing the same to be false or counterfeit:" felony, transportation for life or not less than seven years, or imprisonment with or without hard labour for not more than four years (*i*).

Commitment:—*On* ——, *at* ——, *feloniously did sell and put off five certain pieces of false and counterfeit coin* [*resembling and*] *apparently intended to resemble and pass for certain of the Queen's current gold coin called sovereigns, at and for a lower rate and value than the same then and there by their denomination did import, and were coined and counterfeited for: against the form of the statute in such case made and provided. And you the said keeper*, &c.

Uttering counterfeit coin.] "If any person shall tender, utter or put off any false or counterfeit coin, resembling or apparently intended to resemble or pass for, any of the King's current gold or silver coin, knowing the same to be false or counterfeit:" misdemeanor, imprisonment with or without hard labour for not more than one year (*k*). If a man offer base coin in payment, whether it be accepted or not, it is an uttering (*l*).

(*h*) 2 W. 4, c. 34, s. 5.

(*i*) Id. s. 6.

(*k*) 2 W. 4, c. 34, s. 7.

(*l*) *R.* v. *Welch*, 20 Law J. 101, m.

Commitment:—*On ——, at ——, unlawfully did utter and put off a certain piece of false and counterfeit coin, [resembling and] apparently intended to resemble and pass for certain of the Queen's current silver coin called a half-crown, he the said A. B. then and there knowing the same to be false and counterfeit: against the form of the statute in such case made and provided. And you the said keeper*, &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 572.

Uttering and having other base coin in possession.] "If any person shall tender, utter, or put off any false or counterfeit coin resembling, or apparently intended to resemble or pass for, any of the King's current gold or silver coin, knowing the same to be false or counterfeit, and such person shall, at the time of such tendering, uttering, or putting off, have in his possession, besides the false or counterfeit coin so tendered, uttered, or put off, one or more piece or pieces of false or counterfeit coin, resembling, or apparently intended to resemble or pass for, any of the King's current gold or silver coin:" misdemeanor, imprisonment for not more than two years (*m*). Where two persons were acting in concert in uttering counterfeit coin, and one of them, when in company with the other, uttered a piece of base coin, knowing that his confederate had at the same time other base coin in his possession: it was holden that both might be convicted under this section (*n*).

Commitment may be the same as the last form, adding before the words "against the form," &c.,—*and he the said A. B. at the time he so uttered and put off the said false and counterfeit coin, having in his possession, besides the false and counterfeit coin so uttered and put off as aforesaid, five other pieces of the like false and counterfeit coin [resembling and] intended to resemble and pass for certain of the Queen's current silver money called shillings: against the form of the statute in such case made and provided. And you the said keeper*, &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 573.

Uttering twice within ten days.] If any person shall, "either on the day of such tendering, uttering, or putting off, or within the space of ten days then next ensuing, tender, utter, or put off any more or other false or counterfeit coin,

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(*m*) 2 W. 4, c. 34, s. 7.

(*n*) *R.* v. *Gerrish*, 2 Moody & R. 219. *R.* v. *Rogers*, 2 Moody, Cr. Ca. 85.

resembling, or apparently intended to resemble or pass for, any of the King's current gold or silver coin, knowing the same to be false or counterfeit:" misdemeanor, imprisonment with or without hard labour for not more than two years (*o*).

Commitment may be the same as the common form of commitment for uttering, as *ante*, p. 78, adding a statement of the second offence in like manner, thus:—*and that the said A. B. afterwards and within the space of ten days thence next ensuing, to wit, on ——, at ——, unlawfully did utter and put off a certain other piece of false and counterfeit coin resembling*, &c., as before.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 575.

Uttering after a former conviction.] "If any person, who shall have been convicted of any of the misdemeanors hereinbefore mentioned, shall afterwards commit any of the said misdemeanors:" felony, transportation for life or not less than seven years, or imprisonment with or without hard labour for not more than four years (*p*).

Commitment may be the same as for a common uttering, as *ante*, p. 78, but stating it to have been done "*feloniously*," adding, *he the said A. B. having before then, on ——, at ——, been duly convicted for having before then on ——, at ——*, [stating the offence]: *against the form of the statute in such case made and provided. And you the said keeper*, &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 575.

Having such coin, with intent to utter it.] "If any person shall have in his custody or possession three or more pieces of false or counterfeit coin, resembling or apparently intended to resemble or pass for, any of the King's current gold or silver coin, knowing the same to be false or counterfeit, and with intent to utter or put off the same:" misdemeanor, imprisonment for not more than three years; and if "any person so convicted, shall afterwards commit the like misdemeanor," he shall be guilty of felony, and transported for life or for not less than seven years, or imprisoned with or without hard labour for not more than four years (*q*). It is necessary in this case that the party should have three or more pieces of the coin in his possession; but where two persons,

(*o*) 2 W. 4, c. 34, s. 7.
(*p*) Id.
(*q*) 2 W. 4, c. 34, s. 8.

acting in concert, have three pieces between them, as, if one have two, and the other one or more, both may be convicted (*d*).

Commitment:—*On* ——, *at* ——, *unlawfully had in his custody and possession ten pieces of false and counterfeit money,* [*resembling and*] *apparently intended to resemble and pass for certain of the Queen's current silver coin called shillings, with intent then and there to utter and put off the same, he the said A. B. then and there well knowing the same to be false and counterfeit: against the form of the statute in such case made and provided. And you the said keeper*, &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 577.

Counterfeiting, &c., copper coin, &c.] "If any person shall falsely make or counterfeit any coin resembling, or apparently intended to resemble or pass for, any of the King's current *copper coin*; or if any person shall knowingly, and without lawful authority (the proof of which authority shall lie on the party accused), make or mend, or begin or proceed to make or mend, or buy or sell, or shall knowingly and without lawful excuse (the proof of which excuse shall lie on the party accused), have in his custody or possession any instrument, *tool*, or engine adapted and intended for the counterfeiting any of the King's current copper coin; or if any person shall *buy, sell*, receive, pay, or put off, or offer to buy, sell, receive, pay, or put off any false or counterfeit coin, resembling, or apparently intended to resemble or pass for, any of the King's current copper coin, at or for a lower rate or value than the same by its denomination imports or was coined or counterfeited for:" felony, transportation for not more than seven years, or imprisonment with or without hard labour for not more than two years (*e*).

Uttering base copper coin.] "If any person shall tender, utter, or put off any false or counterfeit coin, resembling, or apparently intended to resemble or pass for, any of the King's current copper coin, knowing the same to be false or counterfeit; or shall have in his custody or possession three or more pieces of false or counterfeit coin, resembling, or apparently intended to resemble or pass for, any of the King's current copper coin, knowing the same to be false and counterfeit, and with intent to utter or put off the same:" misdemeanor, imprisonment with or without hard labour for not more than one year (*f*).

(*d*) *R.* v. *Williams*, Car. & M. 259. *R.* v. *Rogers and Large*, Id. 260, n.

(*e*) 2 W. 4, c. 34, s. 12.

(*f*) Id.

Making or having, &c., coining tools, &c.] "If any person shall knowingly, and without lawful authority (the proof of which authority shall lie on the party accused), make or mend, or begin or proceed to make or mend, or buy or sell, or shall, knowingly and without lawful excuse (the proof of which excuse shall lie on the party accused), have in his custody or possession, any *puncheon, counter-puncheon, matrix, stamp, die, pattern or mould*, in or upon which there shall be made or impressed, or which will make or impress, or which shall be intended to make or impress, the figure, stamp, or apparent resemblance of both or either of the sides of any of the King's current gold or silver coin, or any part or parts of both or either of such sides;—or if any person shall, without lawful authority (the proof whereof shall lie on the party accused), make or mend, or begin or proceed to make or mend, or buy or sell, or shall, without lawful excuse (the proof whereof shall lie on the party accused), have in his custody or possession, any *edger, edging tool, collar*, instrument, or engine adapted and intended for the marking of coin round the edges with letters, grainings, or other marks or figures apparently resembling those on the edges of any of the King's current gold or silver coin, such person knowing the same to be so adapted and intended as aforesaid;—or if any person shall, without lawful authority, to be proved as aforesaid, make or mend, or begin or proceed to make or mend, or buy or sell, or shall, without lawful excuse, to be proved as aforesaid, have in his custody or possession any *press* for coinage, or any *cutting engine* for cutting by force of a screw or of any other contrivance round blanks out of gold, silver, or other metal, such person knowing such press to be a press for coinage, or knowing such engine to have been used or to be intended to be used for or in order to the counterfeiting of any of the King's current gold or silver coin:" felony, transportation for life or not less than seven years, or imprisonment with or without hard labour for not more than four years (*g*). And if a party procure an innocent agent to make any such tools, such party is guilty as a principal, and may be indicted as such (*h*).

Conveying tools, &c., out of the Mint.] "If any person shall, without lawful authority (the proof whereof shall lie upon the party accused), knowingly convey out of any of His Majesty's mints any puncheon, counter-puncheon, matrix, stamp, die, pattern, mould, edger, edging tool, collar, instrument, press, or engine used or employed in or about the coining of coin, or any useful part of any of the several matters aforesaid, or any coin, bullion, metal or mixture of metals:"

(*g*) 2 W. 4, c. 34, s. 10.

(*h*) *R.* v. *Bannen*, Car. & K. 295.

felony, transportation for life or for not less than seven years, or imprisonment with or without hard labour for not more than four years (*i*).

Search warrant for such coin, tools, &c.] If any person shall find or discover any false or counterfeit coin, or any instrument, &c., intended for the counterfeiting of such coin, such person shall seize and carry the same forthwith before some justice of the peace; and "where it shall be proved, on the oath of a credible witness before any justice of the peace, that there is a reasonable cause to suspect that any person has been concerned in counterfeiting the King's current gold, silver, or copper coin, or has in his custody or possession any such counterfeit coin, or any instrument, tool, or engine whatsoever, adapted and intended for the counterfeiting of any such coin, it shall be lawful for such justice, by warrant under his hand, to cause any place whatsoever, belonging to or in the occupation or under the control of such suspected person to be searched, either in the day or night; and if any such counterfeit coin, or any such instrument, tool, or engine shall be found in any place so searched, to cause the same to be seized and carried forthwith before the said justice, or some other justice of the peace; and wherever any such counterfeit coin, or any such instrument, tool, or engine as aforesaid, shall in any case whatever be seized and carried before a justice of the peace, he shall cause the same to be secured, for the purpose of being produced in evidence against any person who may be prosecuted for any offence against this Act" (*k*).

No traverse in misdemeanors.] Persons against whom any bill of indictment shall be found for any misdemeanor against this Act, shall not be entitled to traverse the same to any subsequent assizes or sessions, unless they show good cause, to be allowed by the court, for the postponement of the trial (*l*). This practice of traversing, however, is now wholly abolished in all cases (*m*).

Evidence of coin being counterfeit.] "Where, upon the trial of any person charged with any offence against this Act, it shall be necessary to prove that any coin, produced in evidence against such person, is false or counterfeit, it shall not be necessary to prove the same to be false and counterfeit by the evidence of the moneyer or other officer of His Majesty's Mint, but it shall be sufficient to prove the same to be false or counterfeit by the evidence of any other credible witness (*n*).

(*i*) 2 W. 4, c. 34, s. 11.
(*k*) Id. s. 14.
(*l*) Id. s. 16.
(*m*) 14 & 15 Vict. c. 100 s. 26.
(*n*) 2 W. 4, c. 34, s. 17.

Accessories, &c.] Principals in the second degree, and accessories before the fact, shall be punishable in the same manner as the principal in the first degree; and accessories after the fact shall be liable to be imprisoned for not more than two years (*o*).

An accessory before the fact to uttering counterfeit coin, which is a misdemeanor, may be indicted as a principal, even although he was not in fact present when the coin was uttered (*p*).

COMPOUNDING FELONY, &c.

Compounding felony.] This offence, called in our old books theftbote, is where a person, whose goods have been stolen, takes his goods again, or other amends, not to prosecute (*a*). But it is no offence merely to take back one's goods which have been stolen, unless some favour be shown to the thief (*b*).

The offence is punishable with fine, or imprisonment, or both; unless where it is accompanied with that degree of maintenance of the thief, which may make the party an accessory after the fact to the felony (*c*).

Compounding penal actions.] Compounding any penal action at the suit of a common informer, without the order or leave of some of the courts at Westminster, was formerly punishable with the pillory, and a fine of 10*l.* (*d*); but now with fine, or imprisonment, or both (*e*). And a party may be indicted for taking money for refraining to prefer an information as a common informer, even although the offence, which was to have been the subject of the information, had not in fact been committed; nor is it necessary, to constitute the offence of compounding penal informations, within stat. 18 El. c. 5, that any information should have in fact been laid (*f*).

Rewards for helping to stolen goods.] "Every person who shall corruptly take any money or reward, directly or indi-

(*o*) 2 W. 4, c. 34, s. 18.
(*p*) *R.* v. *Greenwood*, 21 Law J. 127, m.
(*a*) 1 Hawk. c. 59, s. 5.
(*b*) Id. s. 7.
(*c*) 1 Hawk. c. 59, s. 6. See *ante*, p. 7.
(*d*) 18 El. c. 5, s. 4. And see *R.* v. *Crisp et al.*, 1 B. & A. 282.
(*e*) 56 G. 3, c. 138, s. 2.
(*f*) *R.* v. *Best*, 9 Car. & P. 368.

rectly, under pretence or upon account of helping any person to any chattel, valuable security or other property, which shall, by any felony or misdemeanor, have been stolen, taken, obtained or converted,—shall (unless he cause the offender to be apprehended and brought to trial for the same) be guilty of felony:" transportation for life or not less than seven years, or imprisonment, with or without hard labour, for not more than four years (*g*).

Commitment:—*On* ——, *at* ——, *feloniously and corruptly did take and receive from C. D. certain money and reward, to wit, the sum of ten pounds, of the monies of the said C. D., under pretence of helping the said C. D. to certain goods and chattels of him the said C. D., which had before then been feloniously stolen, taken and carried away,* [or *before then been unlawfully obtained from the said C. D. by false pretences,* or as the case may be,] *he the said A. B. not having caused the person by whom the said goods were so* [*stolen, taken, and carried away*] *as aforesaid, to be apprehended and brought to trial for the same: against the form of the statute in such case made and provided. And you the said keeper,* &c.

Advertising a reward for the purpose of getting back stolen property, without prosecuting the offenders, &c., subjects the party to a penalty of 50*l*., recoverable by action (*h*).

CONCEALING BIRTH.

"If any woman shall be delivered of a child, and shall, by secret burying or otherwise disposing of the dead body of the said child, endeavour to conceal the birth thereof:" misdemeanor, imprisonment with or without hard labour for not more than two years; and it shall not be necessary to prove whether the child died before or after its birth (*a*). Where a woman, delivered of a seven months' child, threw it down a privy, this was holden to be an endeavour to conceal the birth, although the birth appeared to be known to another woman (*b*). So if the woman effect the act of secretly burying or otherwise disposing of the dead body, by an agent, she may be guilty of the offence defined by the statute (*c*). And where it appeared that such an agent had previously coun-

(*g*) 7 & 8 G. 4, c. 29, s. 58. See *R.* v. *Pascoe*, 18 Law J. 186, m.

(*h*) 7 & 8 G. 4, c. 29, s. 59.

(*a*) 9 G. 4, c. 31, s. 14.

(*b*) *R.* v. *Eliz. Cornwall*, R. & Ry. 336.

(*c*) *R.* v. *Douglas and Hall*, 7 Car. & P. 644. *R.* v. *Bird and Nash*, 2 Car. & K. 817.

selled the woman to conceal the birth, it was holden that he might be indicted under the 31st section of the same statute, by which persons counselling a misdemeanor within the Act are punishable as principals (*d*). But it must appear that some act of disposal was done by the woman, after the death of the child (*e*); and therefore where a woman having gone to a privy for another purpose, the child slipped from her unawares, fell into the soil, and was suffocated, Patteson, J., held that she could not be convicted under this statute, although it was proved also that she had denied the birth of the child (*f*). So where the child was found concealed in a bed among the feathers, it not being known who placed it there, and it appearing that the mother had sent for a surgeon to attend her in her lying-in, and had prepared clothes for her baby: Park, J., held that those latter facts negatived concealment, and directed the jury to acquit the prisoner (*g*). And in a recent case, before Rolfe, B., on the northern circuit, where it appeared that the woman put the child into her box in her bed-room, with intent to remove and dispose of it permanently afterwards, for the purpose of concealing its birth; his lordship held that it was not a case within the statute; the words "otherwise disposing of the dead body," must mean a disposal of the same nature as that preceding it in the same sentence, namely, "secret burying," and must be such as was intended by the woman to be a final disposal of it (*h*). But in a still more recent case, where the woman concealed the child between the bed and the mattress, and it appeared that before her delivery she constantly denied her being with child, and after her delivery persisted in saying that she had not been delivered, but at last confessed to the surgeon that she had,—the woman being convicted, and the case reserved for the opinion of the judges, they held that she was properly convicted (*i*).

It may be necessary to mention, that a woman may be convicted for this offence, either on an indictment for it, or, when indicted for murder of the child, she may be acquitted of the murder and found guilty of the concealment (*k*).

Commitment:—*On ——, at ——, being then and there delivered of a certain male child, did, by secretly burying the same* [or as the case may be], *unlawfully endeavour to conceal the birth thereof: against the form of the statute in such case made and provided. And you the said keeper*, &c.

(*d*) *R.* v. *Douglas and Hall*, *supra*.

(*e*) *R.* v. *Snell*, 2 Moody & R. 44.

(*f*) *R.* v. *Turner*, 8 Car. & P. 755. See *R.* v. *Coxhead*, Car. & K. 623.

(*g*) *R.* v. *Highley*, 4 Car. & P. 366.

(*h*) *R.* v. *Mary Alton*, York Sp. Ass. 1841, MS.

(*i*) *R.* v. *Goldthorpe*, Car. & M. 335.

(*k*) 9 G. 4, c. 31, s. 14.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 297.

The costs of the prosecution are now allowed, in the same manner as in cases of felony (*l*).

CONFESSION.

See "Evidence."

CONIES.

See "Larceny."

CONSPIRACY.

If two or more persons conspire to do an unlawful act, or to do a lawful act by unlawful means: it is an indictable offence, punishable with fine, or imprisonment, or both; and the imprisonment may be with hard labour for the whole or any part of the time, where the conspiracy is "to cheat or defraud,—or to extort money or goods,—or falsely to accuse of any crime,—or to obstruct, prevent, pervert or defeat the course of public justice" (*a*). Whether any overt act be done in furtherance of the conspiracy, by any of the parties to it, or not, is immaterial (*b*). A conspiracy, by false reports of the death of Buonaparte, to raise the price of the public funds, was holden an indictable offence, even if it had not been pursued to its consequences, or the parties had not been able to carry it into effect (*c*). So is a conspiracy to extort money from a man, by charging him falsely with the commission of an act, whether such act be criminal in itself or not (*d*). So is a conspiracy to injure a man in his trade, by intimidating his workmen, and inducing them to quit his service (*e*). So is a conspiracy to obtain money for an appointment to an

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(*l*) 1 Vict. c. 44.

(*a*) 14 & 15 Vict. c. 100, s. 29.

(*b*) 1 Hawk. c. 72, s. 2. *R.* v. *Gill and Henry*, 2 B. & A. 204. And see *R.* v. *Fowle and Elliott*, 4 Car. & P. 592. *R.* v. *Biers et al.*, 1 Ad. & E. 327.

(*c*) *R.* v. *De Berenger et al.*, 3 M. & S. 67.

(*d*) *R.* v. *Ripsal*, 1 W. Bl. 368; 3 Burr. 1320. And see *R.* v. *Aldridge*, 1 Nev. & M. 776.

(*e*) *R.* v. *Rowlands et al.*, 21 Law J. 81, m.

office under Government (*f*). So is a conspiracy to obtain from others their goods, under false pretences and by subtle means and devices (*g*). So in a conspiracy by false representations to induce a man to forego a claim (*h*). So, a conspiracy by the master of a female apprentice, an attorney, and a gentleman, to assign the apprentice to the latter, though with her own consent, for the purpose of prostitution, was holden indictable (*i*). And when persons conspire to commit a felony, they may be indicted for the conspiracy, although one of the overt acts be in itself a felony (*k*). But where an indictment charged a conspiracy to cause a female pauper, who was chargeable to a particular parish, to be married to a pauper of another parish, the court held that this of itself was not unlawful; to render the conspiracy indictable, it should show that the marriage was to be effected by fraud or violence, or other unlawful means (*l*). So, an indictment will not lie for a conspiracy to commit a mere civil trespass (*m*).

A conspiracy is proved, either expressly, or by proof of facts from which it may fairly be implied. It is seldom proved expressly; nor can a case easily be imagined in which that is likely to occur, unless where one of the persons implicated consents to be examined as a witness for the prosecution. In nearly all cases, therefore, the conspiracy is proved by what is usually termed circumstantial evidence, namely, by the proof of facts from which it may be implied. The acts done by each of the parties, or by some or all of them jointly, in furtherance of their common purpose, are termed overt acts; and when once the concert between the parties is proved, the overt act of each is deemed evidence against all, no matter where committed, whether in the county or elsewhere. And if there be not express proof of the conspiracy itself, such of these overt acts which tend to prove it, should first be selected, and proved; and then the remaining overt acts may be given in evidence (*n*).

If two be charged with a conspiracy, and there be not sufficient evidence against one, the other must be discharged; for one person alone cannot be guilty of a conspiracy (*o*). And for the same reason, a husband and wife cannot alone be indicted for a conspiracy, for they are but one person in law (*p*).

(*f*) *R.* v. *Pollman*, 2 Camp. 229.

(*g*) *R.* v. *Parker et al.* 11 Law J. 102. See *King et al.* v. *R. in error*, 14 Law J. 172, m.

(*h*) *R.* v. *Carlisle and Brown*, 23 Law J. 109, m.

(*i*) *R.* v. *Delaval*, 3 Burr. 1344; 1 W. Bl. 410, 439.

(*k*) *R.* v. *Button et al.*, 18 Law J. 19, m.

(*l*) *R.* v. *Seward et al.*, 1 Ad. & El. 706.

(*m*) *R.* v. *Turner*, 13 East, 228.

(*n*) See *R.* v. *Murphy and Douglas*, 8 Car. & P. 297.

(*o*) 1 Hawk. c. 72, s. 8. *R.* v. *Thompson et al.*, 20 Law J. 183, m.

(*p*) 1 Hawk. c. 72, s. 8.

But if two be indicted for having conspired with others who are not tried, then, if one be acquitted, the other may still be convicted (*q*); or, if two be indicted for or charged with a conspiracy, and one die, the survivor may be convicted (*r*).

Commitment:—*On - , at - , did amongst themselves unlawfully conspire, combine, confederate and agree to* [here state the purpose to be effected, specifically]. *And you the said keeper*, &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 615.

CORONER.

1. *Coroner, how chosen.*

In counties.] In counties there are usually several coroners, the number being fixed by custom. If one of these die, or resign, or be dismissed from his office, a writ *de coronatore eligendo* issues from the Petty Bag Office in the Court of Chancery, directed to the sheriff of the county, commanding him to cause another to be chosen in his stead, in full county court, by the assent of the county (*a*). And as none but freeholders are the suitors in the county court, it is therefore holden that the coroner must be elected by the freeholders only (*b*). The mode of election is appointed and regulated by stat. 7 & 8 Vict. c. 92. When the coroner is elected, he is sworn into office by the sheriff (*c*).

A coroner may now appoint a deputy, subject to the approval of the Lord Chancellor (*d*).

In boroughs.] In every borough, having a separate court of quarter sessions, the council are to "appoint a fit person, not

(*q*) 1 Hawk. c. 72, s. 8.
(*r*) *R.* v. *Nichols*, 2 Str. 1227.
(*a*) 2 Hawk. c. 9, ss. 5, 6.
(*b*) Id. s. 10.
(*c*) 2 Hawk. c. 9, s. 7.
(*d*) 6 & 7 Vict. c. 83, s. 1. See *R.* v. *Perkins*, 14 Law J. 87, m.

being an alderman or councillor, to be coroner of such borough, so long as he shall well behave himself in his office," and they shall fill up every vacancy within ten days after it occurs (*e*).

2. *Inquisitions by him.*

In what cases.] By stat. *de officio coronatoris* (*a*) the coroner shall take inquisition upon all persons slain, drowned, or suddenly dead. He shall also take inquisition upon all persons who die in prison (*b*). The coroner may also inquire of treasure trove (*c*); but it is doubtful whether he has authority in any other matters (*d*). We shall here consider chiefly his duties in case of death. If the death appear to have been occasioned by some other person, he must inquire as to the person who occasioned it, and as to those who were present, aiding and abetting (*e*), or accessories before the fact (*f*); but he has no authority to inquire of accessories after the fact (*g*).

How.] By stat. 4 Ed. 1, (*supra*,) he is directed to "command four of the next towns, or five or six, to appear before him" in the place where the body lies. And by stat. 6 & 7 Vict. c. 12, s. 1, the coroner only within whose jurisdiction the body of any person, upon whose death an inquest ought to be holden, shall be lying dead, shall hold the inquest, notwithstanding that the cause of death did not arise within the jurisdiction of such coroner; and in the case of any body found dead in the sea, or any creek, river or navigable canal within the flowing of the sea, where there shall be no deputy coroner for the jurisdiction of the Admiralty of England, the inquest shall be holden only by the coroner having jurisdiction in the place where the body shall be first brought to land (*h*). And by sect. 2, for this purpose, a detached part of the county shall be deemed part of that by which it is surrounded, or (if surrounded by two or more) by that with which it has the longest common boundary. This, in practice, is done, by the

(*e*) 5 & 6 W. 4, c. 76, s. 62.
(*a*) 4 Ed. 1.
(*b*) 2 Hawk. c. 9, s. 21.
(*c*) 4 Ed. 1, *supra*.
(*d*) See 2 Hawk. c. 9, s. 35.
(*e*) 4 Ed. 1, *supra*.
(*f*) 2 Hawk. c. 9, s. 27.
(*g*) Id. s. 26.
(*h*) See *R.* v. *Hinde*, 13 Law J. 150, m.

coroner directing his precept to the constable of the hundred, requiring him to summon a jury to appear before him at a certain time and place.

When the jury appear, at the time and place appointed, they are sworn and charged by the coroner. The coroner and jury must then view the body; for the coroner has no authority to take an inquisition of death, except *super visum corporis* (*i*). If it have been buried, therefore, the coroner may cause it to be disinterred; or, if it have been buried such a length of time, that from decomposition commencing it is useless to disinter it, the township or gaoler may be amerced (*k*). And this view must be had, before the inquiry is proceeded in (*l*); but it need not be had by the coroner and the jury at the same time (*m*). Nor is it necessary that the inquest should be holden in the same place where the body has been viewed; after the view, the coroner may adjourn the inquest to another place (*n*). It may be necessary here to mention, that the court of the coroner is not a public open court, in which the public have a right to be present; at least it is not so upon an inquisition of death; for it is partly a preliminary inquiry, in the nature of the proceeding before a grand jury, and no person but the coroner, the inquest, and the witness immediately under examination, has a right to be present, if the coroner object to it (*o*).

If any person summoned on the jury, or as witnesses, fail to attend, the coroner may fine him (*p*).

Every coroner, "upon an inquisition taken before him, whereby any person shall be indicted for manslaughter or murder, or as an accessory to murder before the fact, shall put in writing the evidence given to the jury before him, or as much thereof as shall be material; and shall have authority to bind by recognizance all such persons as know or declare anything touching the said manslaughter or murder, or the said offence of being accessory to murder, to appear at the next court of oyer and terminer or gaol delivery, or superior criminal court of a county palatine, at which the trial is to be, then and there to prosecute or give evidence against the party charged; and every such coroner shall certify and subscribe the same evidence, and all such recognizances, and also the inquisition before him taken, and shall deliver the same to the proper officer of the court in which the trial is to be, before or at the opening of the court" (*q*): otherwise the court may fine him (*r*).

(*i*) 2 Hawk. c. 9, s. 23.
(*k*) Id.
(*l*) *R.* v. *Ferrand*, 3 B. & A. 260.
(*m*) 6 & 7 Vict. c. 83, s. 2.
(*n*) 2 Hawk. c. 9, s. 25.
(*o*) *Garnett* v. *Farrand*, 6 B. & C. 611.
(*p*) 7 & 8 Vict. c. 92, s. 17.
(*q*) 7 G. 4. c. 64, s. 4
(*r*) Id. s. 5.

As to medical witnesses: the coroner may issue an order for the attendance of any legally-qualified medical practitioner, who attended the deceased in his last illness, or, if he were not so attended, of any legally-qualified medical practitioner in or near the place of the death; and the coroner may direct a *post mortem* examination of the body, with or without an analysis of the contents of the stomach or intestines (*s*). So the coroner may order the attendance of other legally-qualified medical practitioners, if a majority of the jury require it (*t*). And where any such order shall be personally served upon such practitioner, or shall have been received by him in sufficient time for him to have obeyed it, or shall have been served at his residence, if he do not obey such order, he shall forfeit 5*l.*, upon complaint thereof made by the coroner or any two of the jury before any two justices having jurisdiction in the parish or place where the inquest was held, or where such medical practitioner resides; and such two justices are hereby required, upon such complaint, to proceed to the hearing and adjudication of such complaint, and (if such medical practitioner shall not show to the said justices a good and sufficient cause for not having obeyed such order) to enforce the said penalty by distress and sale of the offender's goods, as they are empowered to proceed by any Act of parliament for any other penalty or forfeiture (*u*).

The fee to such medical witness, for attending to give evidence, is one guinea; and for a *post mortem* examination, with or without analysis of the contents of the stomach, &c., and attending to give evidence, two guineas (*x*): to be paid to him by the coroner, immediately after the termination of the proceedings of the inquest, and included in the account of the coroner's fees (*y*). And the justices at quarter sessions, and the town council in boroughs, shall make out a schedule of the several "fees, allowances and disbursements," which may be paid by the coroner upon the holding of an inquest, other than the above fees to medical witnesses (*z*). And within four months after taking any inquisition, an account must be rendered of the sums thus paid, by the coroner of a county, to the justices in quarter sessions, and by the coroner of a borough to the town council, with vouchers, &c.; which they shall be paid by order on the treasurer of the county or borough, together with 6*s.* 8*d.* for each inquest, over and above their ordinary fees (*a*).

(*s*) 6 & 7 W. 4, c. 89, s. 1.
(*t*) Id. s. 2.
(*u*) Id. s. 6.
(*x*) 6 & 7 W. 4, c. 89, s. 3, and Schedule B.
(*y*) 1 Vict. c. 68, s. 2.
(*z*) Id. s. 1.
(*a*) Id. s. 3.

The finding of the jury, or inquisition, is engrossed upon parchment (*b*), with a caption setting out their names at length; it must then be signed both by the coroner [or his deputy (*c*)], and jurors, and it is usual for them to seal it also (*d*). Formerly there were a number of defects which were holden to render an inquisition invalid. But in nearly all these cases, it may now be amended (*e*).

Warrant for murder or manslaughter.] If the finding of the inquest be for murder or manslaughter, and they do not name any particular person, nothing further can be done by the coroner: but if they name any person as the offender, the coroner may commit him, if he be present, to the common gaol, or to any house of correction near to where the assizes, &c. are to be holden (*f*); if absent, he may grant a warrant to apprehend him.

Felo de se.] If the inquest find the deceased *felo de se*, that is, that he voluntarily killed himself when of sound mind and of the age of discretion, the coroner "shall give directions for the private interment of the remains of such person *felo de se*, without any stake being driven through the body of such person, in the churchyard or other burial ground of the parish or place in which the remains of such person might by the laws or custom of England be interred if the verdict of *felo de se* had not been found against such person;—such interment to be made within twenty-four hours from the finding of the inquisition, and to take place between the hours of nine and twelve at night (*g*)," and without the rights of christian burial (*h*).

Deodand.] If the inquest find the death to have happened *per infortunium*, occasioned by some animal, or by some thing without life which is not attached to the freehold, as, for instance, that the deceased was killed by a fall from a horse or a cart, or the like, without the default or procurement of any person,—the animal or thing which caused the death is forfeited to the Queen (*i*), and the inquest set a value upon it (*k*). If a thing without life be the cause of the death, if it be standing still at the time, only that part of it which was the immediate cause shall be forfeited as a deodand; but if it

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(*b*) See *R.* v. *Beavers*, 1 East, P. C. 583.

(*c*) 6 & 7 Vict. c. 83, s. 1. *R.* v. *Perkin*, 14 Law J. 87, m.

(*d*) See *R.* v. *JJ. Norfolk*, 1 East, 383.

(*e*) 6 & 7 Vict. c. 83, s. 2. And see Arch. Pr. Cr. Off. 174, 175.

(*f*) 5 & 6 W. 4, c. 38, s. 3.

(*g*) 4 G. 4, c. 52, s. 1.

(*h*) Id. s. 2.

(*i*) 1 Hawk. c. 26, s. 3.

(*k*) Id. s. 8.

were moving, then the whole shall be a deodand: as for instance, if a man be killed by a fall from the wheel of a waggon which is not moving, the wheel only is forfeited; but if the waggon were moving, the whole waggon, and the horses also which were drawing it, are a deodand (*l*). If a man be killed by a fall from a waggon, whilst moving, the waggon and horses are forfeited, (as has just now been mentioned,) but not the loading; but if he be killed by a wheel passing over him, the waggon, horses and loading are all forfeited (*m*). If a man fall from a ship at sea, and be drowned, the ship is no deodand; but if the ship be moving in fresh water, it is forfeited, but not the loading (*n*). It has already been observed, that it is only in the case of death *per infortunium* that a deodand can be forfeited; and therefore if the jury find that the death was caused by murder or manslaughter, there cannot be a deodand (*o*).

The coroner must make out an account of all deodands, and certify them into the court of Exchequer, and transmit the account to the commissioners of the Treasury and the commissioners of audit (*p*).

3. *Coroner's fees.*

What fees, and how paid.] For every inquisition (not taken upon the view of a body dying in gaol) which shall be duly taken in any township or place contributing to the county rate, the coroner shall have 20*s.* and also 9*d.* for every mile he shall be compelled to travel from his usual place of abode to take such inquisition: to be paid by order of the justices in sessions, out of the county rates; for which order no fee shall be paid (*a*). The 9*d.* per mile is to be paid to him for the number of miles he has to travel from his home, but not for the number of miles he travels in returning (*b*). And if he hold two or more inquisitions on the same day, at the same place, he is only entitled to one sum of 9*d.* per mile from the place of his abode to the place of taking the inquisition (*c*). The justices are judges whether an inquisition in a particular case was necessary, and duly taken, or not; and if they refuse to allow the coroner's fees for it, because they are of opinion that there was no ground for holding it, the court of Queen's Bench will not interfere to compel them (*d*). The

(*l*) 1 Hawk. c. 26, s. 6.
(*m*) Id.
(*n*) Id.
(*o*) *R.* v. *Polwart*, Q. B. E. 1841, MS.; 10 Law J. 118, m.
(*p*) 3 & 4 W. 4, c. 99, s. 29.
(*a*) 25 G. 2, c. 29, s. 1.
(*b*) *R.* v. *JJ. of Oxfordshire*, 2 B. & A. 203.
(*c*) *R.* v. *JJ. of Warwick*, 5 B. & C. 430.
(*d*) *R.* v. *JJ. of Kent*, 14 East, 229. See 1 Vict. c. 68, s. 3, *ante*, p. 91.

coroner however is entitled to be reimbursed the necessary expenses of holding the inquest, such as fees to medical men, payments to the jurors, and for the hire of rooms, &c.; it is only as to his own fees for holding the inquest and for travelling expenses, that the quarter sessions can exercise a discretion of allowing them or not, according as they may deem the inquest to have been properly holden or unnecessary (*e*).

And for every inquisition taken on view of a body dying in prison, the coroner shall be paid so much as the justices at sessions shall allow, not exceeding 20*s.*, to be paid in like manner (*f*).

In boroughs, in which a separate court of quarter sessions shall be holden, the coroner of such borough, for every inquisition which he shall duly take within such borough, shall be entitled to have the sum of 20*s.*, and also the sum of 9*d.* for every mile, exceeding two miles, he shall be compelled to travel from his usual place of abode to take such inquisition, to be paid by the treasurer of the borough out of the borough fund, by order of the court of quarter sessions of such borough (*g*).

4. *Neglect of Duty, &c., by Coroners.*

"If any coroner, not appointed by virtue of an annual election or nomination, or whose office of coroner is not annexed to any other office, shall be lawfully convicted of extortion, or wilful neglect of duty or misdemeanor in his office:" the court before whom he is convicted may adjudge him to be removed from his office; and thereupon, if he were elected by the freeholders, a writ shall issue to elect another; or if appointed in other manner, upon notice of the conviction to the person having the appointment, he shall appoint another to the office (*a*). Pecuniary penalties of 100*s.* by stat. 3 H. 7, c. 1, and of 40*s.* by stat. 1 H. 8, c. 7, were also inflicted on coroners for being remiss in the execution of their duty.

Also, where a coroner, being imprisoned out of the county, was prevented from executing the duties of his office, this was holden in Chancery to be a good ground for removing him from his office, although in his absence another coroner of the same county had performed his duties (*b*). In the same case it was ruled that the lord chancellor has authority, indepen-

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(*e*) *R.* v. *JJ. of Carmarthenshire*, 16 Law J. 107, m.

(*f*) 25 G. 2, c. 29, s. 2.

(*g*) 5 & 6 W. 4, c. 76, s. 62. See 1 Vict. c. 68, s. 3, *ante*, p. 91.

(*a*) 25 G. 2, c. 29, s. 6. See *R.* v. *Harrison*, 1 East, P. C. 482.

(*b*) *Ex p. Parnell*, 1 Jac. & W. 451.

dently of the above statute, 25 G. 2, c. 29, to remove a coroner from his office for neglect of duty; and the practice is to issue the writ *de coronatore exonerando*, and the writ *de coronatore eligendo*, at the same time (*c*).

COSTS.

See *ante*, vol. 1, p. 360, and *post*, tit. "*Trial.*"

CRUELTY TO APPRENTICES, SERVANTS, &c.

Where the master or mistress of any person shall be legally liable to provide for such person, as an apprentice, or as a servant, necessary food, clothing or lodging, and shall wilfully and without lawful excuse refuse or neglect to provide the same;—or where the master or mistress of any such person shall unlawfully or maliciously assault such person, whereby the life of such person shall be endangered, or the health of such person shall have been or shall be likely to be permanently injured:—such master or mistress shall be guilty of a misdemeanor, and being convicted thereof shall be liable to be imprisoned, with or without hard labour, in the common gaol or house of correction, for any term not exceeding three years (*a*).

And where the offence is committed within a union or parish under guardians, two justices may bind over the clerk of the guardians or other officer, or, in case of a parish not in a union or under guardians, one of the overseers, to prosecute, the justices certifying under their hands that they think it necessary for the purposes of public justice that such guardians or overseer should prosecute (*b*).

Commitment for not supplying food, &c.:—*that A. B. on ——, at ——, being the master of C. D., his apprentice, and legally liable to provide for the said C. D. necessary food and clothing, did wilfully and without lawful excuse refuse and neglect to provide the same for him: against the form of the statute in such case made and provided. And you the said keeper*, &c.

(*c*) *Ex p. Parnell, supra.*

(*a*) 14 Vict. c. 11, s. 1. See *R.* v. *Ridley*, 2 Camp. 650. *Keit's case*, 3 Salk. 47.

(*b*) 14 Vict. c. 11, ss. 7, 6.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 291.

Commitment for assault:—*On* ——, *at* ——, *in and upon one C. D. his apprentice unlawfully and maliciously did make an assault, and him the said C. D. did beat and ill treat, whereby the life of the said C. D. was endangered: against the form of the statute in such case made and provided. And you the said keeper*, &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New. Cr. Law*, 290.

A master however may correct his apprentice, or his servant under age, provided he do so moderately, and with a fit instrument (*c*). But if the correction be immoderate (*d*), or if the beating be not by way of correction, but from revenge or the like, the master is as much punishable for it by law, as if the relation of master and servant, &c., did not exist.

It has been holden however, that if a woman merely expose and desert her infant in a public place, for the purpose of burthening the parish with its maintenance, it is not an indictable offence (*e*). And even if a woman, in breach of her maternal duty, wilfully abandon her infant child, of too tender an age to provide for itself, she is not indictable for it at common law, unless her abandonment cause an injury to the health of the child (*f*).

DEAD BODIES.

Disinterment, or sale of dead bodies, in what cases punishable.] Disinterring a dead body, even for the purpose of dissection, is a misdemeanor at common law, and punishable with fine or imprisonment, or both (*a*). So the sale of a dead body, even for the purpose of dissection, was formerly a misdemeanor, and punishable in like manner (*b*); and is so still, where it is not authorized by stat. 2 & 3 W. 4, c. 75, which shall presently be noticed.

Commitment:—*On* ——, *at* ——, *unlawfully did disinter and dig up the dead body of a man* [*unknown* or *formerly called and known by the name of C. D.*], *then and there buried. And you the said keeper*, &c.

(*c*) *Keit's case*, 3 Salk. 47.
(*d*) Id.
(*e*) *R.* v. *Cooper*, 18 Law J. 168, m.
(*f*) *R.* v. *Phillpott*, 22 Law J. 113, m.

(*a*) *R.* v. *Lynn*, 2 T. R. 733. *R.* v. *Gillies*, R. & Ry. 366, n.
(*b*) See *R.* v. *Cundick*, Dowl. & Ry. N. P. C. 13.

Dead bodies for dissection.] By stat. 2 & 3 W. 4, c. 75, certain provisions are made for regulating schools of anatomy. The secretary of state for the home department may grant a licence to practise anatomy, to any fellow or member of the college of physicians or surgeons; to any graduate or licentiate in medicine; to any person lawfully qualified to practise medicine; to any professor or teacher of anatomy, medicine, or surgery, or to any student attending a school of anatomy,— on an application, countersigned by two justices of the peace for the county, &c. in which the party resides, "certifying that to their knowledge or belief such party so applying is about to carry on the practice of anatomy" (*c*). Inspectors are appointed to inspect the places where anatomy is practised, and to make returns of the dead bodies removed for the purpose of anatomical examination (*d*).

Any executor or other party having lawful possession of the body of any deceased person, and not being an undertaker or other party intrusted with the body for the purpose only of interment, may permit the body of such deceased person to undergo anatomical examination, unless, to the knowledge of such executor or other party, such person shall have expressed his desire, either in writing at any time during his life, or verbally in the presence of two or more witnesses during the illness whereof he died, that his body after death might not undergo such examination, or unless the surviving husband or wife, or any known relative of the deceased person, shall require the body to be interred without such examination (*e*).

And if any person, either in writing at any time during his life, or verbally in the presence of two or more witnesses during the illness whereof he died, shall direct that his body after death be examined anatomically, or shall nominate any party by this Act authorized to examine bodies anatomically to make such examination, and if, before the burial of the body of such person, such direction or nomination shall be made known to the party having lawful possession of the dead body, then such last-mentioned party shall direct such examination to be made, and in case of any such nomination as aforesaid, shall request and permit any party so authorized and nominated as aforesaid to make such examination, unless the deceased person's surviving husband or wife, or nearest known relative, or any one or more of such person's nearest known relatives, being of kin in the same degree, shall require the body to be interred without such examination (*f*).

The body, however, shall not be removed until after forty-

(*c*) 2 & 3 W. 4, c. 75, s. 1.
(*d*) Id. ss. 5, 4.
(*e*) 2 & 3 W. 4, c. 75, s. 7.
(*f*) Id. s. 8.

eight hours from the decease, nor until twenty-four hours' notice to the inspector of the district, nor unless a certificate stating in what manner such person came by his death shall previously have been signed by the physician, surgeon, or apothecary, who attended such person during the illness whereof he died, or who shall be called in after death to view the body, but who shall not be concerned in examining the body after removal; such certificate to be delivered, with the body, to the party receiving the same for anatomical examination (*g*). The body shall be removed in a shell or coffin (*h*); and any person licensed under this Act may lawfully receive it, and is not punishable for having it in his possession (*i*); and within twenty-four hours afterwards he shall lodge with the inspector of the district the certificate he received with the body (*k*). After the body has undergone anatomical examination, it shall be decently buried (*l*).

Any person offending against the provisions of this Act, shall be deemed guilty of a misdemeanor, and upon conviction, shall be punished by imprisonment not exceeding three months, or fine not exceeding 50*l*. (*m*).

As to the burial of dead bodies cast on shore, see *ante*, vol. 1, p. 396.

DEED.

See " Forgery," " Larceny."

DEER.

See " Larceny."

DEFECTS AIDED.

What defects shall not vitiate.] " That the punishment of offenders may be less frequently interrupted in consequence of technical niceties, be it enacted, that no judgment upon any

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(*g*) 2 & 3 W. 4, c. 75, s. 9.
(*h*) Id. s. 13.
(*i*) Id. ss. 10, 14.
(*k*) 2 & 3 W. 4, c. 75, s. 11.
(*l*) Id. s. 13.
(*m*) Id. s. 18.

indictment or information for any felony or misdemeanor, whether after verdict or outlawry, or by confession, default or otherwise, shall be stayed or reversed for want of the averment of any matter unnecessary to be proved, or for the omission of the words '*as appears by the record*,' or the words '*with force and arms*,' or the words '*against the peace*,' nor for the insertion of the words '*against the form of the statute*,' instead of the words '*against the form of the statutes*,' or *vice versâ*; nor for that any person or persons mentioned in the indictment or information is or are designated by a name of office or other descriptive appellation, instead of his, her, or their proper name or names; nor for omitting to state the time at which the offence was committed, in any case where time is not of the essence of the offence; nor for stating the time imperfectly; nor for stating the offence to have been committed on a day subsequent to the finding of the indictment or exhibiting the information, or on an impossible day, or on a day that never happened; nor for want of a proper or perfect venue, where the court shall appear by the indictment or information to have had jurisdiction over the offence" (*a*).

What defects aided by verdict.] "No judgment after verdict upon any indictment or information for any felony or misdemeanor, shall be stayed or reversed for want of a similiter; nor by reason that the jury process has been awarded to a wrong officer upon an insufficient suggestion; nor for any misnomer or misdescription of the officer returning such process, or of any of the jurors; nor because any person has served upon the jury, who has not been returned as a juror by the sheriff or other officer; and that where the offence charged has been created by any statute, or subject to a greater degree of punishment by any statute, the indictment or information shall after verdict be held sufficient, if it describe the offence in the words of the statute" (*b*).

And every objection to an indictment for a formal defect must be taken by demurrer, or by motion to quash the indictment, before the jury shall be sworn, and not afterwards (*c*).

(*a*) 7 G. 4, c. 64, s. 20. See *R.* v. *O'Connor et al.*, 13 Law J. 33, m.; 5 Q. B. 16.

(*b*) 7 G. 4, c. 64, s. 21. See *R.* v. *Martin et ux.*, 8 Ad. & El. 481.

(*c*) 14 & 15 Vict. c. 100, s. 25.

DEFILEMENT OF WOMEN.

See "Rape."

DEMURRER.

A demurrer is a pleading, by which the legality of the last preceding pleading is denied and put in issue, and the issue is then determined by the court. In criminal cases, it is only in proceedings by indictment or information that a demurrer can be pleaded, that is to say, either to the indictment or information itself, or to the plea or subsequent pleading. Formerly a demurrer to an indictment was unusual, because the defendant might have the same advantage of objecting, by motion in arrest of judgment, or writ of error. Afterwards certain defects in indictments were cured by verdict by stat. 7 G. 4, c. 64, s. 20, which therefore could only be taken advantage by demurrer (*a*). And now, by stat. 14 & 15 Vict. c. 100, s. 25, every objection to any indictment, for any formal defect apparent on the face thereof, shall be taken by demurrer or motion to quash such indictment, before the jury shall be sworn, and not afterwards; and every court before which any such objection shall be taken for any formal defect may, if it be thought necessary, cause the indictment to be forthwith amended in such particular by some officer of the court or other person, and thereupon the trial shall proceed as if no such defect had appeared. This however has only reference to formal defects; defects in substance may still be taken advantage of, where not cured or amended, by motion in arrest of judgment or writ of error, as before.

A demurrer in criminal cases has the effect of opening the whole record to the court; and therefore upon arguing it, the defendant may take objections, as well to the jurisdiction of the court where the indictment was found, as to the subject matter of the indictment itself (*b*).

In misdemeanors, the judgment upon demurrer is final, and not merely that the defendant shall answer over (*c*). But in capital cases the defendant is not concluded by the judgment on demurrer, but if the judgment be against him, he may still plead not guilty; and where a defendant in such a case demurs, it is usual for him at the same time to plead over to the

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(*a*) *R.* v. *Fenwick*, 2 Car. & K. 915.

(*b*) *R.* v. *Fearnley*, 1 T. R. 316.

(*c*) Per Lawrence, J., in *R.* v. *Gibson*, 8 East, 112.

felony (*d*). But in felonies not capital, it seems to be doubtful whether the judgment is final or merely a judgment of *respondeas ouster*. In *R.* v. *Bowen*, 1 Car. & K. 501, which was the case of a felony not capital, upon the defendant's counsel being about to demur, Tindal, C. J., cautioned him, saying that he might be bound by his demurrer and not allowed to plead over; he did not actually deliver an opinion upon the point, but expressed great doubt upon it, and the prisoner's counsel thereupon declined to demur, and the prisoner pleaded not guilty. And Hawkins merely says, generally, that in criminal cases not capital, if the defendant demur to the indictment, the court will not give judgment against him to answer over, but final judgment (*e*).

See the form of a demurrer to an indictment, *Arch. New Cr. Law*, 116, and of the joinder thereto, *Id.* 116;—of a demurrer to a plea in bar, *Id.* 116, and of the joinder thereto, *Id.* 117.

DEMANDING MONEY WITH MENACES, &c.

See "Larceny."

DEODAND.

See "Coroner."

DISORDERLY HOUSE.

What, &c.] It is clearly agreed that keeping a bawdy-house is a common nuisance, as it endangers the public peace, by drawing together dissolute and debauched persons, and has also a tendency to corrupt the manners of both sexes by such an open profession of lewdness (*f*). And a lodger who keeps only a single room for the purpose, is indictable as for keep-

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(*d*) *R.* v. *Phelps et al.*, Car. & M. 180. *R.* v. *Adams et al.*, Id. 299.

(*e*) 2 Hawk. c. 31, s. 7.

(*f*) 1 Hawk. c. 74, s. 1.

ing a bawdy-house (*b*). Also a feme covert is punishable for this offence, as much as if she were sole (*c*). But the fact of a woman keeping a house for the purpose of her own prostitution merely, it seems, would not be sufficient in law to make the house a disorderly house; it must be a house for the common reception of men and women generally for the purpose of prostitution.

If the house be not a bawdy-house, but be disorderly in other respects, it may equally be the subject of an indictment. And therefore where an indictment for keeping a disorderly house for the purpose of cock-fighting, boxing, &c., was in the ordinary form of an indictment for keeping a bawdy-house, except that instead of "drinking, tippling, whoring," it substituted the words "fighting of cocks, boxing, playing at cudgels:" it was holden to be good, upon motion in arrest of judgment (*d*).

Any person who shall appear, act, or behave him or herself as master or mistress, or as the person having the care, government, or management of any bawdy-house, gaming-house, or other disorderly house, shall be deemed and taken to be the owner thereof, and shall be liable to be prosecuted and punished as such, notwithstanding he or she shall not in fact be the real owner or keeper thereof (*e*).

Keeping a disorderly house is a misdemeanor, punishable with fine or imprisonment (with or without hard labour (*f*)), or both.

Prosecution.] By stat. 25 G. 2, c. 36, s. 5, in order to encourage prosecutions against persons keeping bawdy-houses, gaming-houses, or other disorderly houses, it is enacted that if any two inhabitants of any parish or place paying scot or bearing lot therein, give notice to any constable (or other peace officer of the like nature, where there is no constable) of such parish or place, of any person keeping a bawdy-house, gaming-house, or any other disorderly house in such parish or place, such constable or other officer shall forthwith go with such inhabitants to a justice of the peace of the county, &c. in which such parish lies, and shall (upon such inhabitants making oath before such justices that they believe the contents of such notice to be true, and entering into recognizance in the penal sum of 20*l.* each, to give or produce material evidence against such person for such offence,) enter into recognizance in the penal sum of 30*l.*, to prosecute with effect such person for such offence at the next general or quarter sessions of the peace, or at the next assizes to be holden for the county in which such parish or place lies, as to the said

(*b*) 1 Hawk. c. 74, s. 3.
(*c*) Id. s. 2.
(*d*) *R.* v. *Higginson*, 2 Burr. 1232.
(*e*) 25 G. 2, c. 36, s. 8
(*f*) 3 G. 4, c. 114.

justice shall seem meet; and such constable or other officer shall be allowed all the reasonable expenses of such prosecution, to be ascertained by any two justices of the peace of the county, &c., where the offence shall be committed, and shall be paid the same by the overseers of the poor of such parish or place; and in case such person shall be convicted of such offence, the overseers of the poor of such parish or place shall forthwith pay the sum of 10*l.* to each of such inhabitants (*g*) and in case such overseers shall neglect or refuse to pay to such constable or other officer such expenses of the prosecution as aforesaid, or shall neglect or refuse to pay upon demand the said sums of 10*l.* and 10*l.*, such overseers and each of them shall forfeit to the person entitled to the same double the sum so refused or neglected to be paid. Also a copy of the above notice shall be served on the overseers of the poor of the parish or place, as shall presently be noticed (*h*).

Upon such constable or other officer entering into such recognizance, the justice shall forthwith make out his warrant to bring the party accused before him, and shall bind him or her over to appear at such general or quarter sessions or assizes, there to answer to such bill of indictment as shall be found against him or her for such offence; and such justice may, if he think fit, demand security for the party's good behaviour in the mean time, and until the indictment shall be found, heard or determined, or the grand jury have ignored the bill (*i*). Such indictment cannot be removed by *certiorari* (*k*).

If the constable neglect or refuse to go before the justice, or to enter into the recognizance, or if he be wilfully negligent in carrying on the said prosecution, he shall forfeit the sum of 20*l.* to each of such inhabitants so giving notice as aforesaid (*l*). Such inhabitants are notwithstanding competent witnesses for the prosecution (*m*).

And by stat. 58 G. 3, c. 70, s. 7, a copy of such notice shall also be served or left at the place of abode of the overseers of the poor of such parish or place, or one of them, and such overseer or overseers shall be summoned or have reasonable notice to attend upon such justice of the peace, before whom such constable shall have notice to attend; and if such overseers or overseer shall then and there enter into such recognizance to prosecute such offender as the constable is required to enter into by stat. 25 G. 2, c. 36, s. 5, then the constable need not enter into such recognizance: but if such

(*g*) See *Clarke* v. *Rice*, 1 B. & A. 604. *Burgess* v. *Boetefeur et al.*, 7 Man. & Gr. 481.

(*h*) See stat. 58 G. 3, c. 70, s. 7, *infra*.

(*i*) 25 G. 2, c. 36, s. 6.

(*k*) *R.* v. *Sanders*, 15 Law J. 158, m.

(*l*) 25 G. 2, c. 36, s. 7.

(*m*) Id. s. 9.

overseers or overseer shall neglect to attend such justice, or shall attend and decline to enter into recognizance, then such constable shall enter into the same, and shall prosecute, and be entitled to his expenses, as in and by the said Act is directed.

Commitment.] The offence may be described thus in the commitment:—*For that she the said C. B., on ——, at ——, unlawfully did keep and maintain a certain common, ill-governed and disorderly house: and did cause certain persons, as well men as women, of evil name and fame and of dishonest conversation, to frequent and come together in the said house, and there to be and remain drinking, tippling, whoring, and misbehaving themselves. And you the said keeper*, &c.

DISSENTERS.

Disturbing their congregations.] If any person "do and shall wilfully and maliciously or contemptuously disquiet or disturb any meeting, assembly or congregation of persons assembled for religious worship, permitted or authorized by this Act or any former Act of parliament, or shall in any way disturb, molest or misuse any preacher, teacher or person officiating at such meeting, assembly or congregation, or any person or persons there assembled: such person or persons so offending, upon proof thereof before any justice of the peace by two or more credible witnesses, shall find two sureties, to be bound by recognizances, in the penal sum of 50*l.*, to answer for such offence, and in default of such sureties shall be committed to prison, there to remain until the next general or quarter sessions; and upon conviction of the said offence at the said general or quarter sessions, shall suffer the pain and penalty of 40*l*" (*a*). A congregation of foreign Lutherans has been holden to be within the protection of the Act (*b*). And it is no defence to show, that the violence complained of was committed by the defendant in asserting his right to the office of clerk to the chapel (*c*), or the like. If two or more be jointly indicted, each is subject to the full penalty (*d*).

There is a similar provision as to Roman Catholic congregations, in stat. 31 G. 3, c. 32, s. 10.

Commitment:—*On ——, at ——, did willingly, and of purpose, maliciously and contemptuously come into a certain congregation of Protestant Dissenters, then and there as-*

(*a*) 52 G. 3, c. 155, s. 12. And see 1 W. & M. c. 18, s. 18; 15 & 16 Vict. c. 36.

(*b*) *R.* v. *Hube et al.*, 5 T. R. 542; Peake, 132.

(*c*) Id.

(*d*) Id.

sembled for the worship of Almighty God, in a certain meeting-house, there situate, then and long before certified, registered and recorded, according to the direction of the statute in that case made and provided, and did then and there wilfully, willingly, and of purpose, maliciously and contemptuously disquiet and disturb the said congregation, the doors of the said meeting-house, where the said congregation were so assembled, not being then locked, barred, or bolted: against the form of the statute in such case made and provided. And you the said keeper, &c.

DOCK.

See "Larceny."

DOGS.

Stealing.] By stat. 8 & 9 Vict. c. 47, s. 2, "if any person shall steal any dog, every such offender shall be deemed guilty of a misdemeanor; and, being convicted thereof before any two or more justices of the peace, shall for the first offence, at the discretion of the said justices, either be committed to the common gaol or house of correction, there to be imprisoned only, or be imprisoned and kept to hard labour, for any term not exceeding six calendar months, or shall forfeit and pay, over and above the value of the said dog, such sum of money, not exceeding twenty pounds, as to the said justices shall seem meet; and if any person so convicted shall afterwards be guilty of the said offence, every such offender shall be guilty of an indictable misdemeanor, and being convicted thereof shall be liable to suffer such punishment, by fine, or imprisonment with or without hard labour, or by both, as the court in its discretion shall award, provided such imprisonment do not exceed eighteen months."

Commitment:—*On ——, at ——, did unlawfully steal, take and carry away a certain dog, the property of C. D., then and there being found, the said A. B. having before been convicted of the like offence: against the form of the statute in such case made and provided.*

As to a summary conviction for a first offence, see vol. 1, p. 404.

Receiving money to restore stolen dogs.] And "any person

who shall corruptly take any money or reward directly or indirectly, under pretence or upon account of aiding any person to recover any dog which shall have been stolen, or which shall be in the possession of any person not being the owner thereof, shall be guilty of a misdemeanor, and punishable accordingly" (*e*). This must be understood to mean an indictable misdemeanor.

Allowing savage dogs to go unmuzzled.] If a man have a dog, which he knows to be of a savage nature, and addicted to bite mankind, and he allow it to go in any frequented place, without being muzzled or otherwise guarded so as to prevent injury from it, it seems that he is indictable as for a common nuisance (*f*).

DRUNKENNESS.

No excuse for crime.] Voluntary drunkenness is no excuse whatever for crime, but the party shall be punished in precisely the same manner as if he were sober at the time he committed the act (*g*).

DRUGS.

See " Abortion."

ELECTOR.

See " Parliament."

EMBEZZLEMENT.

By clerks or servants.] " If any clerk or servant, or any person employed for the purpose or in the capacity of a clerk or servant, shall, by virtue of such employment, receive or

(*e*) 8 & 9 Vict. c. 47, s. 6.
(*f*) See 1 Russ. 303.
(*g*) Co. Lit. 247. 1 Hawk c. 1, s. 6. And see *R.* v. *Carroll*, 7 Car. & P. 145. *R.* v. *Meakin*, Id. 297.

take into his possession any chattel, money, or valuable security, for or in the name or on the account of his master, and shall fraudulently embezzle the same or any part thereof: every such offender shall be deemed to have feloniously stolen the same from his master, although such chattel, money, or security was not received into the possession of such master, otherwise than by the actual possession of his clerk, servant, or other person so employed;" punishment, transportation for not more than fourteen years nor less than seven, or imprisonment with or without hard labour for not more than three years (*h*).

A female servant is within the meaning of the Act (*i*). So is an apprentice, although under age (*k*). So is a farm bailiff (*l*). Where a man was employed by a township, as their accountant and treasurer, and he received and paid all money receivable or payable on their account; in the course of which employment he received a sum of money on account of the overseers, and embezzled it; the judges held that he was a clerk and servant within the meaning of the Act (*m*). So, a treasurer to the guardians of the poor of a parish, appointed by them by virtue of a local Act, has been holden to be a servant of the guardians (*n*). So is a collector of poor-rate, appointed by overseers, a servant of the overseers (*o*). But where a man was appointed assistant-overseer of a district comprising several townships, by the guardians of the union, by order of the poor-law commissioners, and his duty was to assist the overseers of the different townships, and he was paid a salary by the guardians; he received sums for poor-rate from rate-payers in the township of F. (one of the townships in the district), and it was his duty to have paid them into a banker's, to the credit of the overseers of that township, but he embezzled them: being indicted, the judges held that he could not be convicted on the count stating him to be servant of the overseers, for he was appointed and paid by the guardians; and that he could not be convicted on a count stating him to be a servant of the guardians, for it was not their money he embezzled (*p*). So, where the clerk of a chapelry was indicted for embezzling money collected by him from the communicants on Sacrament Sunday, and which was for the relief of the poor, the indictment stating him in one count to be the servant of the clergymen, and in another of the churchwardens: the judges held that he could not be deemed the servant

(*h*) 7 & 8 G. 4, c. 29, s. 47.

(*i*) *R.* v. *Elizabeth Smith*, R. & Ry. 267.

(*k*) *R.* v. *Mellish*, R. & Ry. 80.

(*l*) *R.* v. *Wortley*, 15 Shaw's J. P. 785.

(*m*) *R.* v. *Squire*, R. & Ry. 349.

(*n*) *R.* v. *Welch*, 2 Car. & K. 296.

(*o*) *R.* v. *Adey*, 19 Law J. 149, m. And see *R.* v. *Callahan*, 8 Car. & P. 154.

(*p*) *R.* v. *Townsend*, 2 Car. & K. 168. See *R.* v. *Beaumont*, 23 Law J. 54, m.

of one or the other (*q*). Where the prisoner, a miller, ground other persons' corn at his master's mill for his own benefit, and received the money for it, it was holden not to be embezzlement (*r*). And it is not material whether the servant be paid by certain wages, or by a per centage on the receipts, or by a share of the profits arising from his labour. Where, upon an indictment for embezzlement, it appeared that the prisoner was employed by the prosecutor as master of one of his ships, to take coals from his colliery and sell them, and he was to have a certain proportion of the profits, after deducting the price of the coals at the colliery, for his labour; he took a cargo of coals, sold them, received the price, and absconded with it: a majority of the judges held that he was a servant of the prosecutor, within the meaning of the Act (*s*). So, where the prisoner was employed by the prosecutors as traveller, to take orders for goods and collect money for them from their customers, and was paid by a per centage upon the amount of the orders he obtained; he did not live with them or act in their counting house; he paid his own expenses on his journeys, and he was employed as traveller by several other houses besides: the judges held that he was a clerk to the prosecutors, within the meaning of the Act (*t*). So, where the collector of a poor-rate was paid by a per centage on the rates, and it was objected that he was therefore no clerk or servant within the meaning of the Act,—Richardson, J., over-ruled the objection (*u*). It is immaterial, also, whether the employment be permanent, or occasional only, or even confined merely to the particular instance. Where it appeared that the prisoner had applied to the prosecutor for employment, who agreed to let him carry out parcels, and go of messages when he should have nothing else to do, for which the prosecutor was to pay him what he should think fit; the prosecutor gave him an order, to receive the sum of two pounds for him; he received it and embezzled it: the judges held him to be a servant to the prosecutor, within the meaning of the Act (*v*). So, where it appeared that a farmer, having beasts at Smithfield, of which the prisoner had the keeping as drover, sent the prisoner to deliver a cow to a purchaser, and to receive the money, and the prisoner received and embezzled it: the judges held that the prisoner was a servant within the meaning of the Act (*w*). In a case previously decided, where the prosecutor had sent the prisoner with a cheque to a banker's for payment, and he received the money and embezzled it, it appeared that although the prisoner had been employed by the

(*q*) *R.* v. *Burton*, Ry. & M. 237.
(*r*) *R.* v. *Harris*, 23 Law J. 110, m.
(*s*) *R.* v. *Hartley*, R. & Ry. 139.
(*t*) *R.* v. *Carr*, R. & Ry. 108.
(*u*) *R.* v. *Ward*, Gow, 168.
(*v*) *R.* v. *Spencer*, R. & Ry. 299.
(*w*) *R.* v. *Hughes*, Ry. & M. 370.

prosecutor, sometimes as a regular labourer, sometimes as a roundsman, for a day at a time, and on several occasions had been sent to receive the amount of cheques from the banker's; he was not at the time in question in the prosecutor's employment, but was to receive sixpence for going to the banker's: Parke, J., (after consulting Taunton, J.,) held that he was not a clerk or servant within the meaning of the Act (*x*).

Where a man is the clerk or servant of partners, he is deemed the clerk and servant of all and of each of the partners; and if he receive money for or on the private account of any one of them, and embezzle it, he may be indicted under this statute (*y*). The clerk of a joint stock company is the clerk and servant of the directors who appoint him; and where such a clerk, having the care and custody of the cheques paid and cancelled by the company's banker, embezzled one of them, and was charged in the indictment as having embezzled a piece of paper the property of the company, and convicted, the court held that he was properly convicted, although he himself was a shareholder in the company (*z*). The clerk of a corporate body,—of the guardians of a poor-law union for instance,—is a clerk within the meaning of this statute, whether duly appointed or not (*a*). A clerk to a savings' bank may be charged as clerk to the trustees, though appointed by the managers (*b*). So the clerk of a benefit society may be charged as the clerk and servant of the trustees (*c*).

The embezzlement is usually to be implied from circumstances: as that, having received the money, he ran away without accounting for it (*d*); or although he may have continued in the service, that he denied the receipt of the money, &c. (*e*); or did not account with his master for that particular money, when he accounted for others received at the same time or afterwards (*f*). But merely not accounting for money received, which the clerk or servant had authority to receive, or not entering it in the books, will not of itself be sufficient to convict him of embezzlement, if he did not deny the receipt of it (*g*), and the case be unattended by any other circumstance proving an intent to defraud the master of it. Or if, instead of denying the appropriation, he, in rendering his accounts, admit it, alleging a right, however unfounded, or an excuse, however frivolous, he is not deemed guilty of embezzle-

(*x*) *R.* v. *Freeman*, 5 Car. & P. 534. But see *Good's case*, Car. & M. 582.

(*y*) *R.* v. *Leach*, 3 Stark. N. P. C. 70.

(*z*) *R.* v. *Watts*, 19 Law J. 192, m. *R.* v. *Atkinson*, Car. & M. 525.

(*a*) *R.* v. *Beacall*, 1 Car. & P. 457.

(*b*) *R.* v. *Jenson*, Ry. & M. 434.

(*c*) *R.* v. *Hall*, Ry. & M. 474.

(*d*) *R.* v. *Sarah Williams*, 7 Car. & P. 338.

(*e*) *R.* v. *Hobson*, R. & Ry. 56. *R.* v. *W. Taylor*, Id. 63.

(*f*) *R.* v. *John Hall*, R. & Ry. 463; and see *R.* v. *Jackson*, Car. & K. 384.

(*g*) *R.* v. *Jones*, 7 Car. & P. 833.

ment (*h*); and the same, although he afterwards abscond (*i*). And in one case it was holden by Vaughan, B., that, where the prisoner had entered the sum, as received, in his master's book, but did not pay it over, this was not embezzlement (*k*). But in a recent case, where the coachman of a stage-coach had to account for monies received by him from passengers, to the bookkeeper at one of the stages, and had to pay over the monies to his master; and on one particular occasion, he returned the true sums to the bookkeeper, and they were entered in the books accordingly, but he paid to his master a less sum, as being all that he had received: Patteson, J., held this to be embezzlement (*l*). So, where a banker's cashier was indicted for embezzlement, it appeared that it was his duty to put all sums received by him into a box or till, of which he kept the key, and to enter them in the money book; at the end of each day, he balanced the book, and the balance formed the first item in his account on the following day; the master having a suspicion of him, examined his money book, according to which there ought then to be 1,300*l.* in the till and box, but on examining these, there was in fact but a sum of 345*l.* in them, he having applied the rest to his own use, but when, or in what sums, or from whom the particular monies embezzled was received, did not appear: the judges at the Central Criminal Court held this to be within the statute, and the prisoner was convicted (*m*). Where a master, suspecting his shopman of defrauding him, gave a friend a marked crown piece to spend at his shop; the friend accordingly went to the shop, bought an article of the shopman, and paid for it with the marked crown; the shopman kept the crown, and never accounted for it, and it was found upon him: this was holden to be embezzlement (*n*). So, where a servant, authorized to receive money, and whose duty it was to account every evening for what he so received, received three sums for his employer on different days, and neither accounted for them nor paid them over: Coleridge, J., held this to be embezzlement, although the servant never denied the receipt of these sums, nor rendered any account in which they were omitted (*o*). And the embezzlement may be deemed to have been committed, either in the county, &c., where the prisoner received the money, &c., or in that in which he ought to have accounted to his master and did not (*p*). If, instead of re-

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(*h*) *R.* v. *Norman*, Car. & M. 501.
(*i*) *R.* v. *Creed*, Car. & K. 63.
(*k*) *R.* v. *Hodgson*, 3 Car. & P. 422.
(*l*) *R.* v. *White*, 8 Car. & P. 742.
(*m*) *R.* v. *Grove*, 7 Car. & P. 635; but see *R.* v. *Chapman*, Car. & K. 119.
(*n*) *R.* v. *Gill*, 23 Law J. 50, m.
(*o*) *R.* v. *Jackson*, Car. & K. 384.
(*p*) *R.* v. *Hobson*, R. & Ry. 56. *R.* v. *W. Taylor*, Id. 63. *R.* v. *Murdock*, 21 Law J. 22, m.

ceiving it from a third person, he take the money out of his master's stock, the offence is larceny, not embezzlement (z)

Commitment:—*On* ——, *at* ——, *being then clerk* [or *servant*] *to C. D., did receive and take into his possession certain money, to the amount of ten pounds and upwards, for and in the name and on the account of the said C. D., his master, and the said money feloniously did embezzle: against the form of the statute in such case made and provided. And you the said keeper,* &c.

If the property embezzled consist of money, bank notes, bills of exchange, &c., or other valuable security, it may be described as "certain money" as in the above form; but where goods or chattels have been embezzled they must be described shortly, as in larceny (*a*).

The prisoner may be committed for three distinct embezzlements, committed within the space of six calendar months from the first to the last of them (*b*).

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 446.

As to embezzlement by agents, bankers, &c., see *ante*, p. 16, tit. "*Agent.*"

By officers in Her Majesty's service.] "If any person employed in the public service of His Majesty, and entrusted by virtue of such employment with the receipt, custody, management or control of any chattel, money or valuable security, shall embezzle the same or any part thereof, or in any manner fraudulently apply or dispose of the same or any part thereof, to his own use or benefit, or for any purpose whatsoever except for the public service: every such offender shall be deemed to have stolen the same;" and on conviction, shall be transported for not more than fourteen years nor less than seven, or imprisoned with or without hard labour for not more than three years (*c*).

The commitment may readily be framed from the last form. The property may be laid both in the commitment and indictment "in the Queen's Majesty" (*d*). The offender may be indicted, tried, &c., either in the county or place in which he committed the offence, or in which he was apprehended (*e*).

As to stealing or embezzling the Queen's stores, &c., see *post*, tit. "*Queen's stores, embezzling, &c.*"

(*z*) *R.* v. *Murray*, Ry. & M. 276. See *R.* v. *Wilson*, 9 Car. & P. 27.

(*a*) See 7 & 8 G. 4, c. 29, s. 48; 14 & 15 Vict. c. 100, s. 18.

(*b*) See 7 & 8 G. 4, c. 29, s. 48.

(*c*) 2 W. 4, c. 4, s. 1. See *R.* v. *Townsend*, Car. & M. 178.

(*d*) 2 W. 4, c. 4, s. 4.

(*e*) Id. s. 5.

EMBRACERY.

Embracery is an attempt to corrupt or influence jurors to give their verdict in favour of a particular party. All attempts whatsoever to corrupt, influence, or instruct a jury, or in any way to incline them to be more favourable to one side than to the other, by money, promises, letters, threats, or persuasions, or in any other way than by the strength of the evidence and the arguments of counsel, at the trial in open court, is an act of embracery (*a*); and is punishable by indictment at common law, as a misdemeanor, with fine or imprisonment, or both (*b*); and with fine or imprisonment by some ancient statutes, 5 Ed. 3, c. 10; 34 Ed. 3, c. 8, and 38 Ed. 3, c. 12.

And by stat. 6 G. 4, c. 50 (the Jury Act), s. 61, it is provided, enacted and declared, that notwithstanding anything therein contained, every person who shall be guilty of the offence of embracery, and every juror who shall wilfully or corruptly consent thereto, shall and may be respectively proceeded against by indictment or information, and be punished by fine or imprisonment, in like manner as every such person and juror might have been before the passing of that Act.

ENGROSSING.

See "Forestalling."

ERROR, WRIT OF.

In what cases.] After judgment given against a defendant, upon an indictment at sessions, if the indictment be bad in substance, or the judgment be erroneous, or any other defect in substance appear upon the face of the record, the defendant may have the judgment reversed by writ of error; and in

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(*a*) 1 Hawk. c. 85, s. 1.

(*b*) 1 Hawk, c. 85, s. 7; and 83, s. 38.

ordinary cases it is the only way in which the judgment can be reversed (*a*), except upon appeal, as mentioned, *ante*, p. 22.

And judgment must have been given, otherwise a writ of error will not lie. And therefore formerly, where a man was indicted for felony and found guilty, and he prayed his clergy which was allowed to him, he could not afterwards have a writ of error; for he was convicted only, not attainted (*b*).

And the judgment must have been upon an indictment; for no writ of error will lie upon a mere summary conviction (*c*); not even upon a conviction of forcible entry by justices of the peace upon view (*d*); nor in any other case.

And it must be a judgment against the defendant (*e*); for there is no instance of error being brought upon a judgment for a defendant after an acquittal.

If the indictment be against two, and judgment against both, error may be brought by either, but it must be in the names of both; but if upon an indictment against two, judgment be against one only, then he may bring error in his own name alone.

Attorney-general's fiat.] Before a writ of error in a criminal case, however, is sued out, the attorney-general's fiat for it must first be obtained (*f*). First, therefore, obtain a certificate from counsel that there is error in the record; and upon producing that, and a verified copy of the indictment or record to the attorney-general, he usually grants his fiat for the writ of error. This is granted as a matter of course in misdemeanors, upon sufficient cause being shown for it; but in cases of felony, it is granted only *ex gratiâ* (*g*).

The writ and return.] There seems to be two modes of proceeding, either of which the party may adopt at his option: he may bring the writ of error directed to the judges, justices, or recorder, who pronounced the judgment, and have the record returned to the court of Queen's Bench under and by virtue of it; or he may have the record removed into the court of Queen's Bench by *certiorari*, and then bring a writ of error *coram nobis* upon it (*h*). The former, however, seems

(*a*) *Rice's case*, Cro. Jac. 104. *R.* v. *JJ. of W. R. Yorkshire*, 7 T. R. 467. 9 Vin. Abr. Error, D.

(*b*) *Long's case*, Cro. Eliz. 489. 2 Bac. Abr. Error, A. 2. Vin. Abr. Error, C.

(*c*) *Anon.*, Vent. 33. *Anon.*, Id. 171. *Berry's case*, 2 Jon. 107. Vin. Abr. Error, D. 2 Bac. Abr. Error, A.

(*d*) *Anon.*, Vent. 171.

(*e*) 3 Inst. 214. 2 Bac. Abr. Error, A. 1.

(*f*) 2 Hawk. c. 50, s. 13.

(*g*) 4 Bl. Com. 392. See Com. Dig. Error, A. *Gargrave's case*, Ro. Rep. 175. Vin. Abr. Error, F.

(*h*) *R.* v. *Foxley*, 1 Salk. 266. 3 Com. Dig. Error, B.

to be the most approved mode of proceeding. Upon producing the *fiat* for the writ at the petty bag office, the clerk there will make out the writ. Deliver the writ then to the clerk of assize (if the trial were at the assizes), or to the clerk of the peace (if the trial were at sessions), and he will make a return to it. For this purpose he must get the record made up, and engrossed on parchment (*h*). He then endorses the writ thus: "*The record and proceedings, whereof mention is within made, appear in a certain schedule to this writ annexed. The answer of the commissioners* [or *justices*, or *recorder*], *within named.*" He then annexes the record to the writ, and transmits it to the crown office.

Bail.] In cases of misdemeanor, the defendant, in order to stay execution of the judgment, or, if in custody, to be set at liberty, pending the writ, may enter into recognizance, with two sufficient sureties, before any judge of the court of Queen's Bench, or any commissioner for taking bail in the country, in such sum as the judge or commissioner shall direct, conditioned to prosecute the writ of error with effect, and, in case the judgment shall be affirmed, forthwith to render the defendant to prison according to the judgment, if imprisonment be adjudged (*i*). If the defendant be under disability, then a recognizance with two sufficient sureties shall be taken (*k*). The sureties justify, &c., in the same manner as in civil actions (*l*).

Upon the recognizance being transmitted to the crown office of the court of Queen's Bench, the clerk there will give a certificate thereof to the defendant's agent, which being duly verified by affidavit made before one of the judges of any of the superior courts of common law, or a commissioner, shall be a sufficient warrant to the gaoler to discharge the defendant, or, if a fine have been levied, to authorize the person having the amount, to repay it to the defendant (*m*).

If judgment be affirmed, and imprisonment were adjudged, then, if the defendant had been imprisoned any time under the judgment at the time he was discharged, he shall be imprisoned for the remainder of the time only, which was adjudged (*n*).

Assignment of errors.] As soon as the writ is returned, and the return filed, get the assignment of errors drawn and signed by counsel, engross it on paper, and, in misdemeanors, file it in the crown office; but in cases of felony, the defendant must appear in court, and assign errors in person.

(*h*) See the form, Arch. New Cr. Law, p. 193.
(*i*) 8 & 9 Vict. c. 68, s. 1.
(*k*) Id.
(*l*) 8 & 9 Vict. c. 68, s. 1.
(*m*) Id. s. 2.
(*n*) Id. s. 3.

It may be necessary to mention, that in cases of misdemeanor, if, at this or any other stage of the proceedings, the court of error, upon motion, decide that the defendant has wilfully delayed or neglected to prosecute the writ of error with effect, they may order the writ to be quashed; and thereupon the defendant will be liable to execution on the judgment (*o*).

Joinder in error.] After filing the assignment of errors, let the plaintiff in error obtain a side bar rule to join in error, and serve it, together with a copy of the assignment, on the prosecutor or his attorney; and if he do not file a joinder in error within eight days after service of the rule, the plaintiff in error may sign judgment as for want of a joinder, at the opening of the office on the morning of the ninth day, unless an order of the court or of a judge, extending such time, shall have been obtained and served, and in such case judgment shall not be signed until the day after the expiration of the time granted by such order (*p*).

The prosecutor, within the time here mentioned, must get his joinder in error drawn, engrossed on paper, and signed by counsel, and must file it at the crown office.

Argument, &c.] Upon the joinder in error being filed, either party may obtain a rule for a concilium at the crown office, and serve it on the opposite party; and then the case is set down in the crown paper for argument. The rule specifies the day for which the case will be put into the paper, and must be drawn up and served six days at least before such day within forty miles of London, or within eight days in other cases (*q*). But in all cases where the defendant is in prison or otherwise undergoing his sentence, the court, upon application on his behalf, will in general fix some early day in the term for the argument, and a rule must be drawn up accordingly, which must be served on the prosecutor or his attorney.

Paper books are then delivered by the parties respectively to the judges, and the case argued, as in ordinary cases upon a demurrer; and the court then deliver their judgment.

Judgment, &c.] The judgment of the court of error is either that the judgment of the court below be affirmed, or *quod cassetur*. If it be affirmed, the court will remand the defendant to his former custody, in order that he may undergo his punishment. If it be reversed, then by stat. 11 & 12 Vict. c. 78, s. 5, it shall be competent for the court of

(*o*) 8 & 9 Vict. c. 68, s. 5.
(*p*) Reg. Cr. Off. 17, 18.
(*q*) Reg. Cr. Off. 21.

error either to pronounce the proper judgment, or to remit the record to the court below, in order that such court may pronounce the proper judgment upon such indictment, &c. This latter provision seems to have reference only to cases, where the error is in the judgment itself; as where the judgment is for ten years' transportation, where by law it should only be for seven; or where the judgment is for transportation, where by law the offence is punishable with imprisonment only; or the like. Formerly, in such a case, where the judgment was reversed, the court had no power to pronounce any other judgment but merely that of reversal, and the defendant was consequently discharged (*r*).

Where an outlawry is reversed for error, the party is put to plead to the indictment (*s*).

ESCAPE.

Punishment of the party escaping.] If a person, lawfully arrested upon a criminal charge, escape from the person having him in custody, he is guilty of a misdemeanor, and punishable with fine or imprisonment, or both (*a*). When and how punishable, as a breach of prison, will be treated of hereafter, under the title "*Prison Breaking.*"

Aiding prisoners to escape.] Aiding a prisoner, in custody on a criminal charge, to escape, was at common law a misdemeanor (*b*), if the party knew of his offence (*c*).

If any person shall assist a prisoner to attempt to escape from any constable or other officer or person, who shall have the lawful charge of him in order to carry him to gaol, under a commitment for treason or felony, expressed in the warrant: felony, transportation for seven years (*d*).

(*r*) *R.* v. *Bourne et al.*, 7 Ad. & El. 58.

(*s*) 2 Hawk. c. 50, s. 18.

(*a*) See 2 Hawk. c. 17, s. 5.

(*b*) *R.* v. *Buckle*, 1 Russ. 361.

(*c*) See *R.* v. *Young*, 1 Russ. 391.

(*d*) 16 G. 2, c. 31, s. 3.

But this does not extend to cases, where the commitment is merely for suspicion of felony (*e*); nor to cases where an actual escape is effected (*f*).

Commitment:—*For that one C. D. on* ——, *at* ——, *being lawfully in custody of one E. F. a constable, in order to carry him the said C. D. to gaol, under and by virtue of a warrant of G. H. esquire, one of her Majesty's justices of the peace in and for the county of* ——, *for having feloniously stolen the goods of I. K., he the said A. B. feloniously and unlawfully did then and there assist the said C. D. in attempting to escape from the custody of the said E. F.: against the form of the statute in such case made and provided. And you the said keeper,* &c.

See further upon this subject, *post*, tit. "*Prison Breaking*" and "*Rescue.*"

Punishment of officers allowing escape.] If a constable, gaoler or other officer, having a prisoner in lawful custody, allow him to escape, it is either through negligence, or done intentionally; which latter is technically termed a voluntary escape. A negligent escape is a misdemeanor, and punishable with fine, or imprisonment, or both. A voluntary escape is punishable, in like manner as a misdemeanor, whether the party escaping were guilty or not of the offence imputed to him (*g*); but if he be retaken and convicted, then the offence of the officer in allowing him to escape, is punishable in the same manner as the offence of which the party was convicted, and is of the same degree, whether treason, felony or misdemeanor (*h*). In order, however, to constitute an escape of either kind, punishable as above mentioned, there must have been an actual arrest of the party, justifiable in point of law (*i*), and upon a criminal charge (*k*).

In the same manner, if a private person arrest a man for an offence, in cases where by law he may do so,—if he allow such person to escape, before he hands him over to the custody of the constable or other officer, he is in like manner punishable for it (*l*).

Commitment:—*On* ——, *at* ——, *having one C. D. in his custody, under and by virtue of a warrant of G. H. esquire, one of her Majesty's justices of the peace in and for the county of* ——, *for having feloniously stolen the goods of E. F., did unlawfully and* [*negligently* or *voluntarily*] *per-*

(*e*) *R.* v. *Walker*, 1 Leach, 97. *R.* v. *Greenif*, Id. 363.
(*f*) *R.* v. *Tilley*, 2 Leach, 602.
(*g*) 2 Hawk. c. 19, s. 26.
(*h*) 2 Hawk. c. 19, s. 22.
(*i*) Id. s. 2.
(*k*) Id. s. 3.
(*l*) 2 Hawk. c. 20, ss. 2, 6.

mit the said C. D. to escape and go at large. And you the said keeper, &c.

Escape of prisoners of war.] If any person shall knowingly and wilfully aid or assist a prisoner of war to escape, he shall be deemed guilty of felony, and shall be transported for life, or for not less than seven years (*m*).

Other escapes.] Aiding a person to escape, who is in lawful custody, though not on a criminal charge, is a misdemeanor at common law, and punishable as such with fine or imprisonment or both (*n*).

As to escaping from prison, or aiding a prisoner to do so, see "*Prison Breaking.*"

As to the escape of convicts under sentence of transportation, or aiding them to escape, or rescuing them from the custody of persons removing them, see "*Transportation.*"

EVIDENCE.

1. *What must be proved.*

The facts constituting the offence, &c.] Offences at common law, are defined by the rule of the common law relating to them; offences by statute, are defined by the statute creating them. In both cases, every thing stated in the definition of the offence is material, and must be proved. On the other hand, if any thing stated in an information or indictment &c., be not included in the definition of the offence, it may be rejected as surplusage and need not be proved (*a*). In the same manner, the facts constituting a legal defence must be proved.

(*m*) 52 G. 3, c. 156, s. 1. See *R.* v. *Martin*, R. & Ry. 196.

(*n*) *R.* v. *Allan*, Car. & M. 295.

(*a*) *R.* v. *Wm. Jones*, 2 B. & Ad. 611; and see 14 & 15 Vict. c. 100, s. 24.

Intent.] The intent with which an act is done, often forms a part, and a most material part, of the definition of an offence, and must be proved accordingly. This does not admit of positive proof; it can be proved only by the confession of the party, or by proving facts from which it may fairly be inferred (*b*).

Malice.] Malice often forms a material part of the definition of an offence, and must be proved: but this, like intent, can only be proved by the confession of the party, or by the proof of facts from which it may be inferred. It may often be inferred from the facts of the case alone: for instance, if a man, without any apparent motive, wilfully do an act which must necessarily be injurious to another, we are warranted in saying that he did it maliciously, unless he prove the contrary (*c*). Where the offence is committed in respect to inanimate things, the malice, if inferred, must of course be deemed to be malice towards the owner; but if committed with respect to animals, it may possibly be from malice to the animal, and not to the owner. There were formerly some nice distinctions taken upon this subject, with respect to some of the offences now punishable under one of Peel's Acts (*d*), relating to malicious injuries; but it is provided by that statute, "that every punishment and forfeiture by this Act imposed on any person maliciously committing any offence, whether the same be punishable upon indictment or upon summary conviction, shall equally apply and be enforced, whether the offence shall be committed from malice conceived against the owner of the property in respect of which it shall be committed, or otherwise (*e*)."

Guilty knowledge.] A guilty knowledge of some particular fact, sometimes forms a material ingredient in an offence, and must of course be proved: such for instance, as uttering a forged instrument, knowing it to be forged: receiving stolen goods, knowing them to have been stolen; and the like. And this guilty knowledge, like intent and malice, can be proved only from the party's confession, or by proving facts from which it may be inferred. Where a man was charged with uttering a forged bill of exchange, knowing it to be forged, evidence that he gave a false account as to the parties to it, and that when he was apprehended he had other forged bills in his possession, was received in proof of his guilty knowledge that the first bill was forged (*f*). So, that he had pre-

(*b*) See Arch. New Cr. Law, 119, 88.
(*c*) Id. 120.
(*d*) 7 & 8 G. 4, c. 30.
(*e*) Id. s. 25.
(*f*) *R.* v. *Haugh*, R. & Ry. 120.

viously uttered other forged notes, of the same description, would be good evidence of it (*g*). So, upon a charge of uttering counterfeit coin, knowing it to be counterfeit, the guilty knowledge may be inferred from the party's having other base coin in his possession at the time, or having passed other base money about the time, or the like (*h*). So, upon a charge of receiving stolen goods, knowing them to have been stolen, evidence that the party had at other times received goods from the same party, under suspicious circumstances (*i*), or that he concealed the goods, or bought them for a price much under their value, or the like,—may be received in proof of his guilty knowledge that they had been stolen (*k*).

Time and place.] The time at which an offence is charged to have been committed, unless it be of the essence of the offence, need not be proved as laid; nor need it now be stated in the indictment (*l*); a variance in this respect is wholly immaterial.

So, if an offence be charged to have been committed at a particular place within the county or other jurisdiction of the magistrate or court, and it be proved to have been committed at some other place within the same jurisdiction, the variance will be wholly immaterial, unless the place be laid as matter of local description. In an indictment, it is no longer necessary to state the parish or place where the offence was committed, unless where local description is required (*m*); and the same may be said with respect to a commitment.

2. *The manner of proof.*

By Confessions.

Confession to a prosecutor, constable, &c.] A confession by the defendant, if obtained fairly, and without holding out any inducement to him to make it, is nearly the strongest evidence that can be given of the facts stated in such confession, against the party making it; and is abundantly sufficient of itself, without any confirmation, to warrant a verdict against him (*a*). But it is only evidence against the party making it,

(*g*) *R.* v. *Ball*, R. & Ry. 132.
(*h*) See Arch. New Cr. Law, 121, 573.
(*i*) *R.* v. *Dunn and Smith*, Ry. & M. 146.
(*k*) See Arch. New Cr. Law, 479, 480.
(*l*) 14 & 15 Vict. c. 100, s. 24.
(*m*) Id. s. 23.
(*a*) 2 Hawk. c. 46, ss. 33, 39.

and not against others (*b*), except perhaps in treason and conspiracy, in cases where the confession or declaration of one of the conspirators may amount to an overt act (*c*); and except upon indictments against the inhabitants of a parish or township, &c., where the admission of one is deemed evidence, though perhaps slight, against the parish or township generally (*d*). Even where one of three prisoners, on examination before a magistrate, stated that he and another of the prisoners committed the felony, and the other who was present did not deny it: Holroyd, J., held that this confession could not be given in evidence against the other prisoner, and he said that it had been so decided (*e*). And where on the trial of two, a confession of one of them, affecting also the other, is to be given in evidence, the judge, if the confession be in writing, usually orders the officer, whose duty it is to read it, to read it in such a way as not to disclose the name of the other defendant; or if the confession be not in writing, many of the judges give a similar caution to the witness who proves it. This, however, is entirely discretionary.

A confession to be given in evidence, must be of the offence charged in the indictment, or of some matter relating to it: you cannot give in evidence any confession or declaration of the prisoner of his having committed similar crimes upon other occasions, or of his general disposition to commit them (*f*). But where there were two indictments against a prisoner, one for receiving tin, and the other for stealing iron,—on the trial for receiving the tin, it was holden that the whole of a statement made by him might be given in evidence, although only part of it related to the tin, the rest relating to the iron (*g*). And on the other hand, the prisoner may insist on the whole of his confession being stated, for the part omitted may qualify or control the meaning of the part stated (*h*).

Also, a confession to be given in evidence must not have been upon any examination upon oath: if upon taking the examination of a prisoner before a magistrate, the prisoner be examined upon oath, his examination cannot afterwards be read against him at the trial (*i*). But where a prisoner was thus sworn by mistake, it being supposed that he was a witness, and, upon the mistake being discovered, the magistrate ordered the deposition to be destroyed, cautioned the party, and then took his examination: Garrow, B., held this latter

(*b*) 2 Hawk. c. 46, s. 34.

(*c*) See *R.* v. *Watson*, 2 Stark. 140, 141.

(*d*) See *R.* v. *Whitby Lower*, 1 M. & S. 636. *R.* v. *Hardwick*, 11 East, 578.

(*e*) *R.* v. *Appleby et al.*, 3 Stark. 33. S. P. *R.* v. *Swinnerton et al.*, Car. & M. 593.

(*f*) *R.* v. *Cole*, 1 Ph. Ev. 170. *R.* v. *Butler*, 1 Car. & K. 221.

(*g*) *R.* v. *Mansfield*, Car. & M. 140.

(*h*) 2 Hawk. c. 46, s. 42.

(*i*) 2 Hawk. c. 46, s. 37. And see *R.* v. *Sandys et al*, Car. & M. 345.

examination to be receivable in evidence (*k*). Where a statement made by a prisoner upon oath, at a time when he was not under any suspicion, was tendered in evidence, Vaughan, B., held it to be admissible (*l*). But in another case, upon a trial for administering poison, where it appeared that the prisoner and several other persons were examined upon oath before a magistrate upon the subject, no specific charge being at that time made against any person, but in the result the prisoner was committed for the offence: Gurney, B , refused to receive in evidence what the prisoner stated upon that occasion; the above case of R. *v.* Tubby was cited, and he admitted he was disposed to agree with that decision, and mentioned a case of R. *v.* Walker, for forgery of a will, tried at the Old Bailey, where the prisoner's affidavit in the Ecclesiastical Court was read in evidence against him; but he distinguished R. *v.* Tubby from the present case, the examination in this case being taken at the time the prisoner was committed (*m*). Another distinction, perhaps, might with propriety be taken, namely, between a case where the oath is merely voluntary, as the affidavit in Walker's case above mentioned, and where the party is in strictness bound upon his oath to speak the whole truth, as in an examination before a magistrate, or the like.

Without inducement.] If any inducement, by promise of favour or by threat, be held out to the prisoner,—as by telling him that he had better tell all he knew (*n*), or that he had better tell where he had got the property (*o*), " I will forgive you if you tell the truth (*p*)," "you had better split, and not suffer for all of them (*q*)," "it is of no use for you to deny it, for there are the man and boy who will swear they saw you do it (*r*)," " it would have been better if you had told at first (*s*)," " that unfortunate watch has been found, and if you do not tell me who your partner was, I will commit you to prison as soon as we get to Newcastle (*t*),"—or the like: any confession the prisoner may have been thereby induced to make, cannot be given in evidence against him (*u*). And where a female servant was indicted for attempting to set fire to her master's house, and it appeared that the bed furniture and bedding of two rooms had been set on fire, and that a silver spoon and a few other things had afterwards been found

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(*k*) *R.* v. *Webb*, 4 Car. & P. 504.
(*l*) *R.* v. *Tubby*, 5 Car. & P. 530.
(*m*) *R.* v. *Lewis*, 6 Car. & P. 161.
(*n*) *R.* v. *Kingston*, 4 Car. & P. 387; and see *R.* v. *Garner*, 18 Law J. 1, m.; 2 Car. & K. 920.
(*o*) *R.* v. *Dunn*, 4 Car. & P. 543.
(*p*) *R.* v. *Hewett*, Car. & M. 534.
(*q*) *R.* v. *Thomas*, 6 Car. & P. 353.
(*r*) *R.* v. *Mills*, 6 Car. & P. 146.
(*s*) *R.* v. *Walkley & Clifford*, 6 Car. & P. 175.
(*t*) *R.* v. *Parratt*, 4 Car. & P. 570.
(*u*) 2 Hawk. c. 46, s. 36.

in the sucker of the pump; and the master stated at the trial, that he said to the prisoner that if she did not tell the truth about the things that were found in the pump, (but saying nothing about the fire,) he would send for the constable: Coltman, J., refused to hear what the prisoner said in answer (x). So, a reward offered by government for the discovery of the persons who committed a murder, with a promise of pardon to any but the person who struck the blow,—if it can be proved that it came to the knowledge of the prisoner before he made any statement, will prevent that statement from afterwards being given in evidence against him (y).

But nothing short of a threat, or of a promise of favour with respect to the offence charged against the prisoner, will have this effect (z). Where a prisoner, on being charged with robbing her mistress, voluntarily said "I shall confess, for I think it will be best for me," to which her mistress said "I do not know that," but neither sanctioned her hope nor checked it: it was holden that a confession made by the prisoner after that, was admissible in evidence (a). Where a magistrate, before taking a prisoner's statement, said to him "be sure you say nothing but the truth, or it will be taken against you, and may be given in evidence against you at your trial," it was holden that a statement made by the prisoner after that, was admissible in evidence against him (b). Where a confession was obtained from a boy of fourteen years of age, by questions put to him by the constable who apprehended him, and at a time when the boy had not had food for nearly a day, a majority of the judges held that the confession was receivable in evidence (c). So, where a confession was obtained by means of questions from the magistrate, it was holden that it might be read in evidence against the prisoner at his trial (d); yet such a mode of obtaining a confession is not very commendable, and ought to be avoided. Where a man, committed for murder, was visited by the chaplain of the gaol, who, in a long and very earnest discourse with him upon the necessity of repentance, and of confessing his sins, wrought so much upon the man's mind, that, in a subsequent interview with the gaoler, the prisoner said that he would tell him all about it; the gaoler told him not to say anything which he wished the magistrates not to know, as it would be his duty immediately to tell them of it; the prisoner said that he wished it, and then gave the details of the murder: the judges were unani-

(x) *R.* v. *Hearn*, Car. & M. 109.

(y) See *R.* v. *Boswell et al.*, Car. & M. 584. See *R.* v. *Dingley et al.*, *infra*.

(z) See *R.* v. *Baldry*, 21 Law J. 130, m.

(a) *R.* v. *Warren*, 12 Shaw's J. P. 571.

(b) *R.* v. *Holmes*, 1 Car. & K. 248.

(c) *R.* v. *Thornton*, Ry. & M. 27.

(d) *R.* v. *Ellis*, Ry. & M. N. P. C. 432.

mously of opinion, that this confession was receivable in evidence (*e*). So, where a man, committed with others for murder, told the chaplain of the prison that he wished to see a magistrate, and asked if any proclamation had been made, and any offer of pardon; and the chaplain answered that there had, but the prisoner must understand that he could not hold out to him any inducement to make any statement, as it must be his own free and voluntary act; and when the prisoner afterwards saw a magistrate, he told him that no inducement had been holden out to him to confess anything, but that what he was about to say was his own free and voluntary act, and he then made a statement: it was holden by Pollock, C. B., that this was receivable in evidence against the party, upon his subsequent trial with the others for the murder (*f*). So, where a boy of ten years of age, after being enjoined by a clergyman to "speak the truth in the face of God," made a disclosure of his guilt to a policeman, it was holden to be admissible in evidence against him upon his trial (*g*). Where a constable told a prisoner "if you will tell where the property is, you shall see your wife," Patteson, J., held that this was not such an inducement as to exclude evidence of what the prisoner said (*h*). So, a statement made by a person as a witness before a committee of the House of Commons, and under compulsory process, was received in evidence by Abbot, C. J., upon an indictment afterwards preferred against the witness for perjury (*i*). So, where a prisoner in gaol, on a charge of felony, asked the turnkey of the gaol to put a letter in the post for him, directed to his father, and the turnkey, instead of putting it into the post, sent it to the prosecutor: Garrow, B., held that the letter was admissible in evidence against the prisoner, notwithstanding the manner in which it had been obtained (*k*).

But where a threat or promise is thus used, it must appear to have been used by some person concerned in apprehending, examining, or prosecuting the prisoner, or by the person to whom the confession is made, to have the effect of preventing such confession from being given in evidence. Thus, where, upon a man being apprehended for larceny, several of his neighbours admonished him to tell the truth and consider his family, and he therefore made a confession to the constable; the judges held this confession to be receivable in evidence, because the inducement to confess was not holden out or sanctioned by any person who had any concern in the busi-

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(*e*) *R.* v. *Gilham*, Ry. & M. 186.

(*f*) *R.* v. *Dingley et al.*, 1 Car. & K. 637.

(*g*) *R.* v. *Rusborough*, 11 Shaw's J. P. 280.

(*h*) *R.* v. *Lloyd*, 6 Car. & P. 393.

(*i*) *R.* v. *Merceron*, 2 Stark. 366.

(*k*) *R.* v. *Derrington*, 2 Car. & P. 418.

ness (*l*). Upon the trial of a girl for the murder of a bastard child, it appeared that a woman who was present when the surgeon was attending her, mentioned that she had advised her to confess, and the girl then made a confession to the surgeon: Parke, J., and Hullock, B., held that the confession was receivable in evidence, because the inducement to confess was holden out by a person who had no authority whatever to do so; if it had been by the constable, prosecutor, or the like, it would have been otherwise (*m*). But where a married woman was apprehended for felony, and her husband being present told her that if she knew anything about it, to tell the truth: this was holden not to be receivable in evidence, as the inducement, being holden out in the presence of the constable, was the same as if it had been holden out by him (*n*). So, where a girl, being apprehended for the murder of her child, was left by the constable in the custody of a woman, who told her she had better tell the truth, otherwise it would lie upon her, and the man would go free; upon which she made a confession to the woman: Parke and Taunton, JJ., held this confession not receivable, as it was made in consequence of an inducement held out to the prisoner by a person who had her in custody (*o*). And where the committing magistrate told the prisoner, that if he would make a disclosure, he would do all he could for him, and the prisoner afterwards made a disclosure to the turnkey of the gaol: Parke, J., held that it was not receivable in evidence after the promise holden out by the magistrate, more especially as the turnkey had not given any previous caution to the prisoner (*p*). But where a threat was used in the presence of the prosecutor, by another person in his company, it was holden that a confession thus obtained could not be given in evidence; it was the same as if the threat had been used by the prosecutor himself (*q*).

If, however, after an inducement by threat or promise has been holden out to a prisoner to confess, and, before any confession actually made, the prisoner be undeceived as to the promise or threat, and assured that he has nothing to hope from the one or fear from the other, any confession he makes afterwards will be receivable in evidence. Where a man, committed for murder, was told by a magistrate, that, provided he was not the person who struck the fatal blow, he would use all his endeavours and influence to prevent any ill consequences to him, if he would disclose all he knew of the murder; and the magistrate wrote upon the subject to the secretary of state;

(*l*) *R.* v. *Row*, R. & Ry. 153.

(*m*) *R.* v. *Gibbons*, 1 Car. & P. 97. *R.* v. *Moore*, 21 Law J. 199, m. And see *R.* v. *Tyler*, 1 Car. & P. 129.

(*n*) *R.* v. *Laugher*, 2 Car. & K. 225.

(*o*) *R.* v. *Enoch*, 4 Car. & P. 539; but see *R.* v. *Sleeman*, 23 Law J. 19, m.

(*p*) *R.* v. *Cooper*, 5 Car. & P. 535.

(*q*) *R.* v. *Luckhurst*, 23 Law J. 18, m.

but upon learning from him that mercy could not be extended to the prisoner, he informed the prisoner of it; afterwards the prisoner made a confession before the coroner, but he was previously told by him that any confession or admission he should make would be given in evidence against him at the trial, and that no hope or promise of pardon could be held out to him: Littledale, J., held clearly, that this confession was receivable in evidence (*r*). So, upon the trial of a girl for administering poison, it appeared that she was threatened by her mistress, that, if she did not tell all about it that night, a constable should be sent for the next morning, to take her before the magistrates; and she made a statement accordingly, which the judge refused to receive in evidence; but it appeared, also, that the constable was actually sent for the next morning, and took her into custody, and that whilst on the way to the magistrates, in his custody, she made another confession to him: Bosanquet, J., held this latter confession to be admissible in evidence, for, at the time the prisoner made it, the inducement was at an end (*s*). So, where the constables had induced a prisoner to confess, by telling him that his companions had "split," and he might as well do so; but afterwards, upon this appearing before the magistrate who took the examination, he informed the prisoner that his confessing would do him no good, but that he would be committed to prison to take his trial: Denman, C. J., held, that a confession by the prisoner to the magistrate, after this caution, was receivable in evidence (*t*).

But even in cases where this confession of a prisoner is not receivable in evidence, on account of it having been obtained by means of some threat or promise, any discovery made in consequence of it may be proved (*u*); and in such a case, the counsel for the prosecution is merely allowed to ask the witness, whether, in consequence of something he heard from the prisoner, he found anything, and where, &c., and the witness in answer can only give evidence of the fact of the discovery. In one case, indeed, the judges are reported to have gone further. The case was thus:—the prisoner was indicted for stealing a guinea and two bank notes for 5*l*. each; the prosecutor in his evidence was about to state a confession of the prisoner, but admitting that he had previously told the prisoner that it would be better for him to confess, Chambre, J., who tried the case, would not allow the confession to be given in evidence; but he allowed the prosecutor to prove "that the prisoner brought him a guinea and a 5*l*. bank note,

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(*r*) *R.* v. *Cleeves*, 4 Car. & P. 221.

(*s*) *R.* v. *Richards*, 5 Car. & P. 318.

(*t*) *R.* v. *Howes*, 6 Car. & P. 404. See stat. 11 & 12 Vict. c. 42, s. *post*, pp. 128, 129.

(*u*) 2 Hawk. c. 46, s. 38.

which he gave up to the prosecutor as the guinea and one of the notes that had been stolen from him:" and a majority of the judges (Lord Ellenborough, Mansfield, Macdonald, Heath, Grose, Chambre, and Wood,) held that this evidence was properly receivable (*x*). On the very same day, the judges appear to have decided another case, which was thus:—the prisoner was indicted for stealing money, to the amount of 1*l.* 8*s.*; when he was apprehended, the prosecutor went to him, and asked him what he had done with his money which he had taken out of his pack, saying at the same time "that he only wanted his money, and if the prisoner gave him that, he might go to the devil if he pleased;" the prisoner therefore took 11*s.* 6½*d.* out of his pocket, and said it was all that was left of it: a majority of the judges (Macdonald, Chambre, Lawrence, Le Blanc, and Heath,) held, that this was not receivable in evidence; Wood, Grose, and Mansfield were of a different opinion, Lord Ellenborough *dubitante* (*y*). There is also another case upon the same subject, decided at a later period; the former cases were decided in 1809, the following case in 1822: the prisoner was indicted for stealing several gowns and other articles; he was induced, by promises of the prosecutor, to confess his guilt, and after that confession he took the officer to a particular house, as the house where he had disposed of the property, and pointed out the person there to whom he had delivered it; that person denied having received it, and the property was never found: the confession was not admitted in evidence, but the taking of the officer to the house above mentioned was, and the prisoner was convicted; Bayley, J., who tried the prisoner, entertaining a doubt whether the latter evidence was properly receivable, submitted the matter to the judges, who held that it was not, and that the conviction therefore was wrong: that the confession was excluded, because being made under the influence of a promise, it could not be relied on; and the act of the prisoner, under the same influence, not being confirmed by the finding of the property, was open to the same objection; the influence which produced a groundless confession, might also produce groundless conduct (*z*). The above case of R. *v.* Jones, however, shows that the finding of the property makes no difference. There is no doubt that if the goods in Jenkins's case had been found at the house, the officer might prove that he found them there in consequence of something he learned from the prisoner; but whether that would also let in evidence of the prisoner's act in accompanying the officer to the house, is another question.

(*x*) *R.* v. *Griffin*, R. & Ry. 150.
(*y*) *R* v. *Jones*, R. & Ry. 151.
(*z*) *R.* v. *Jenkins*, R. & Ry. 492.

Before a magistrate.] A confession made by a party charged with felony [or misdemeanor], on his examination before a magistrate, or before a secretary of state upon a charge of treason, has always been allowed to be given in evidence against the defendant upon his trial (*a*). And by a recent statute, 11 & 12 Vict. c. 42, s. 18, we have seen (*ante*, vol. 1, p. 261), that where a prisoner is brought before a justice of the peace, charged with an indictable offence,—after the examination of the witnesses on the part of the prosecution has been completed, the justice, or one of the justices, by or before whom such examination shall have been so completed, shall read or cause to be read to the accused the depositions taken against him, and shall say to him these words, or words to the like effect: "Having heard the evidence, do you wish to say anything in answer to the charge? You are not obliged to say anything unless you desire to do so, but whatever you say will be taken down in writing, and may be given in evidence against you on your trial;" and whatever the prisoner shall then say in answer thereto, shall be taken down in writing, and read over to him, and shall be signed by the said justice or justices, and kept with the depositions of the witnesses, and shall be transmitted with them to the proper officer of the court where the defendant is to be tried; and afterwards, upon his trial, the same may, if necessary, be given in evidence against him, without further proof thereof, unless it shall be proved that the justice or justices purporting to sign the same, did not in fact sign the same (*b*). Such is the humane provision of the English law, to prevent a prisoner from committing himself, by any unadvised admission, which otherwise, in his confusion and agitation arising from the proceedings against him, he might make, without calculating on its consequence. It is in the true spirit of fairness towards the prisoner, which distinguishes the administration of criminal justice in this country, from its administration in any other country in Europe.

The prisoner's statement, when required by the prosecutor for the purpose of being given in evidence before the grand jury or at the trial, is merely produced from among the depositions, and proves itself (*c*). And as the usual form of such statement recites the charge against the prisoner, and that after examination of the witnesses against him the magistrates addressed to him the caution above mentioned, setting it out in the very words of the statute,—the written statement itself, purporting to be signed by the magistrate, and accompanying the depositions, proves all that recital, as well as what the prisoner said upon the occasion. But if the usual form have

(*a*) 2 Hawk. c. 46, ss. 31, 32.
(*b*) 11 & 12 Vict. c. 42, s. 18.
(*c*) *R.* v. *Sansome*, 19 L. J. 143, m.

not been adopted, then the caution, the prisoner's statement, and the magistrate's signature, must be proved as at common law (*d*), namely, by the magistrate or his clerk, or by some person who was present at the examination (*e*).

But although the prisoner be thus cautioned before he makes his statement, yet if his statement amount to a confession, and he were induced to make it by any previous promise of favour or threat, as already mentioned, *ante*, p. 122, it cannot be read in evidence against him,—unless, indeed, before he make the statement, he have been undeceived as to the threat or promise, and told that he has nothing to fear from the one or hope from the other (*f*). To meet this difficulty, the same section of the statute which directs the above caution to be given, contains also this proviso, "that the said justice or justices, before such accused person shall make any such statement, shall state to him and give him clearly to understand, that he has nothing to hope from any promise of favour, and nothing to fear from any threat, which may have been holden out to him, to induce him to make any admission or confession of his guilt, but that whatever he shall then say may be given in evidence against him upon his trial, notwithstanding such promise or threat: provided nevertheless, that nothing herein enacted and contained, shall prevent the prosecutor in any case from giving in evidence any admission or confession, or other statement of the person accused or charged, made at any time, which by law would be admissible as evidence against such person" (*g*). It was at one time attempted to be argued that no confession made after the first caution above mentioned, could be given in evidence against a prisoner, unless the second proviso were also complied with, and the defendant told that he had nothing to hope from any promise of favour, and nothing to fear from any threat which might have been holden out to him to induce him to confess; but the judges in the Criminal Appeal Court, in the case of *R.* v. *Sansome*, 19 Law J. 143, m., unanimously decided that this was necessary only in cases where such a threat or promise had actually been holden out, in order to undeceive the prisoner in respect of it, as mentioned, *ante*, p. 125, and make his confession evidence against him notwithstanding; but that in all other cases, it is sufficient to give the first caution, after which any confession, not induced by threat or promise, may be given in evidence against the prisoner. The case of *R.* v. *Sansome* was thus:—The prisoner was tried upon an indictment for murder; when he was before the committing magistrate, the ordinary caution, that

(*d*) Per Alderson, B., in *R.* v. *Boyd*, 19 Law J. 141.

(*e*) *R.* v. *Hearn*, Car. & M. 109. *R.* v. *Wilshaw*, Id. 145.

(*f*) See *ante*, p. 125.

(*g*) 11 & 12 Vict. c. 42, s. 18.

first mentioned, *ante*, p. 128, was read to him, after which he made a statement, amounting to a confession, which was signed by him, and by the committing magistrate, and transmitted with the depositions; at the trial, however, it was objected that the statement could not be given in evidence against the prisoner, as the caution as to the threat or promise had not also been given to him by the magistrate: but the judges, on reference to them, held that this was not necessary; the latter was not a condition precedent to the admissibility of a confession of the prisoner before the committing magistrate, and was necessary only where there had been a previous threat or promise; if given, it has the effect of rendering the confession admissible in evidence, notwithstanding such previous threat or promise; and if not given, the case remained as at common law, and the confession was admissible in evidence, unless the party were influenced by some previous threat or promise to make it (*h*). So, where after the first of these cautions, the prisoner made a statement, which was taken down, but was not signed by him or by the magistrate; he was then remanded, and upon being brought up again, some questions were put to the witnesses by the prisoner's attorney, who then objected that as an addition had been made to the evidence, the prisoner's former statement could not be evidence against him; afterwards at the trial, the same objection being made, the statement was admitted in evidence against the prisoner, and the point reserved for the opinion of the Criminal Appeal Court: and that court afterwards held that the evidence was properly received (*i*).

By Presumptions.

A presumption is, where some facts being proved, another follows as a natural or very probable conclusion from them, so as readily to gain assent from the mere probability of its having occurred without further proof (*a*). The fact thus assented to, is said to be presumed; that is, taken for granted, until the contrary be proved by the opposite party: *stabitur præsumptioni donec probetur in contrarium* (*b*). And it is adopted the more readily, in proportion to the difficulty of proving the fact by positive evidence, and to the obvious facility of disproving it, or of proving facts inconsistent with it, if it really never occurred. It is therefore, we have seen (*c*), adopted in proof of intent, of the wilful doing of an act, of

(*h*) *R.* v. *Sansome*, 19 Law J. 143, m.

(*i*) *R.* v. *Bond*, 19 Law J. 138, m.

(*a*) Arch. Pl. & Ev. Civ. Act. 362, 363.

(*b*) Co. Lit. 373.

(*c*) *Ante*, pp. 119, 120.

malice, and of guilty knowledge, for these can be proved only by the admission of the party, or from his overt acts from which the jury may infer or presume them. It is adopted also in proof of the commission of the offence itself, in the absence of evidence of any person who actually saw it committed, as shall be noticed presently.

Presumptions are of three kinds: *violent presumptions*, where the facts and circumstances proved, *necessarily* attend the fact presumed (*d*); *probable presumptions*, where the facts and circumstances proved, *usually* attend the fact presumed (*e*); and light or rash presumptions, which, however have no weight or validity at all (*f*).

Under this head is classed that very usual mode of proving offences, adopted from necessity, called circumstantial evidence. Direct and positive evidence of the commission of offences cannot in all cases be procured; people do not always commit offences publicly, in the open day, but oftener commit them in secret, or at night; and if circumstantial evidence were excluded by our law, all secret offences might be committed with impunity. Circumstantial or presumptive evidence, therefore, is allowed in all cases, where direct and positive evidence of the defendant's having committed the offence cannot be procured; and it is often as satisfactory as direct and positive evidence. It is also adopted as confirmatory evidence, even where there is direct and positive evidence of the offence committed, in order to induce the jury to yield a more ready credence to the direct and positive evidence. In larceny, for instance, after proving that the goods were taken or stolen, proof that they were found in the possession of the prisoner shortly afterwards, and that he did not give any satisfactory account of the manner in which he came by them, is deemed good presumptive evidence of the prisoner having stolen them; see *post*, tit. "*Larceny*;" and if to this be added evidence that the goods, when found, where concealed or disguised, or that the prisoner, when charged with the offence, absconded, it will very much strengthen the presumption. On the other hand, if the goods be not found for a considerable time after they were stolen, the presumption is proportionably weakened. And in larceny, even where there is direct and positive evidence of the prisoner's guilt, if at the same time there be any doubt whatever of the jury believing the witnesses, it is usual in practice to add evidence of all circumstances the case furnishes, from which the jury may infer the guilt of the prisoner, and that the witnesses are speaking the truth; as for instance, that the prisoner was seen in the neighbourhood of the

(*d*) Gilb. Ev. 157.
(*e*) 3 Bl. Com. 372.
(*f*) Id. Gilb. Ev. 157. Co. Lit. 6. b. And see Arch. Pl. & Ev. Civ. Act. 363, and the cases and other authorities there collected.

place from whence the goods were stolen, shortly before they were missed, or about the time when it is probable they were stolen; that shortly afterwards they were found in his possession, or that he pawned or sold them; that he gave a false name in doing so; that he sold them very much under their value; that he gave a false or unsatisfactory account of the manner in which he came by them;—or the like.

Upon an indictment against any person exercising an office, profession, or employment, for a criminal act done by him as such officer, &c., proof that he acted as such officer, &c., will raise the presumption that he was duly appointed, and his appointment therefore need not be proved (*g*). And as to offences against officers:—By stat. 8 & 9 Vict. c. 87, (for the prevention of smuggling,) it is enacted by sect. 132, that if upon any trial a question shall arise whether any person is an officer of the army, navy, or marines, being duly employed for the prevention of smuggling, and on full pay,—or an officer of customs or excise,—evidence of his having acted as such shall be deemed sufficient, and such person shall not be required to produce his commission or deputation, unless sufficient proof shall be given to the contrary. So in the case of peace officers, justices of the peace, constables, &c., it is sufficient to prove that they acted in those characters, without producing their appointment; and that even in the case of murder (*h*). And the same in other cases, where it becomes a question whether a person acting as a public officer was so at the time. Therefore, upon an indictment against an officer under government, for malversation in his office, a letter of instructions, signed by three of the lords of the treasury, was allowed to be read in evidence, without producing the commission by which they were appointed (*i*); for it is a general presumption of law, that a person acting in a public capacity is duly authorized to do so (*k*). For the same reason, upon an indictment for perjury, in an oath taken before a surrogate in the ecclesiastical court, the fact of the person who administered the oath, having acted as a surrogate, was holden sufficient evidence of his being so, without producing his appointment (*l*).

As to the presumptive proof of intent, the wilful doing of an act, malice, and guilty knowledge, see *ante*, pp. 119, 120.

(*g*) See 6 T. R. 535, n. 4 T. R. 366, per Buller, J. 1 Stark. 405. Peake, 236.

(*h*) Per Buller, J., *Berryman* v. *Wise*, 4 T. R. 366.

(*i*) *R.* v. *Jones*, 2 Camp. 131.

(*k*) Per Ld. Ellenborough, C. J., 3 Camp. 433, 432.

(*l*) *R.* v. *Verelst*, 3 Camp. 432.

By Proofs.

Best evidence.] Whatever is not confessed, and cannot be presumed, must be proved by direct and positive evidence. This evidence is of two kinds,—written evidence, and the parol testimony of witnesses,—both of which shall be treated of under the next two heads. I shall in this place merely notice the general rule, which is applicable to criminal cases as well as to civil, namely, that the best evidence the nature of the case will admit of, must be produced, if it be possible to be had, but if not possible, then the next best evidence that can be had shall be allowed (*a*). For if it be found that there is any better evidence existing than that which is produced, the very non-production of it creates a presumption that it would have detected some falsehood, which at present is concealed (*b*). Within the meaning of this rule, written evidence is better than parol evidence; and, therefore, if a deed or other private written instrument is to be proved, nothing else but the deed or instrument itself shall be admitted in evidence, unless it be proved to have been destroyed or lost, or be in the hands of the opposite party (*c*); but in the case of records and other public instruments which cannot or ought not to be removed, they are proved by examined copies or certificates, as we shall see hereafter. Upon an indictment for the forgery of a written instrument, the forged instrument must be produced, unless it have been destroyed by the defendant, or unless it be in his possession, and he refuse to produce it after notice (*d*). But upon an indictment for stealing a written instrument, or destroying a will, or the like, no notice to produce it is necessary, but secondary evidence of the instrument is admissible without it (*e*).

As to parol evidence, there is no distinction between one kind and another; all kinds are of equal degree in the eye of the law; you cannot object to a fact being proved by one witness, because another could have proved it much better; it may be matter of observation to the jury; but if the witness be competent, it is not matter of legal objection to him.

Secondary evidence.] If the written instrument be destroyed or lost, then upon proof of its destruction, or on proof of search for it in every place where it was likely to be found, without

(*a*) Arch. Pl. & Ev. Civ. Act. 372.

(*b*) 3 Bl. Com. 368. Gilb. Ev. 16. 1 Show. 397. Carth. 220. 3 East, 192.

(*c*) Arch. Pl. & Ev. Civ. Act. 372.

(*d*) See *post*, p. 135.

(*e*) *R.* v. *Aickles*, 1 Leach, 330.

effect, the party will be allowed to give secondary evidence of it; that is to say, he will be allowed to give in evidence a counterpart or examined copy of it, or to give even parol evidence of its contents (*f*). Where in order to account for the non-production of an indenture of apprenticeship, a witness stated that hearing it was in the possession of the pauper (who was then very ill, and shortly afterwards died), he called upon him to make inquiries about it, and he told him that when the indenture expired, it was given up to him, and he burnt it; it was proved also that inquiry was made of the executrix of the master, who said she knew nothing about it; but it did not appear that any search had been made for it among the papers of the master or of the pauper: the court held this to be sufficient; it was not, perhaps, sufficient as proof of the actual destruction of the indenture by the pauper, but it was sufficient to discharge the party of laches in not making further inquiry (*g*) And in a case in a note in East's Reports (*h*), Lord Ellenborough, C. J., said, "I remember an indictment tried before the late Mr. Justice Buller, against a man, I think, of the name of Spragg, for forging a note, which he afterwards got possession of and swallowed; and parol evidence was permitted to be given of the contents of the note, though no notice to produce it had been given; but then, indeed, it might be said that such a notice would be nugatory, as the thing itself was destroyed." Where the document is lost, the proof of the search for it must be by persons who actually at one time had the custody of the original, or by the persons legally entitled to the custody of it (*i*); and must be such as to satisfy the court that sufficient diligence has been used in the search (*k*).

So, if the deed or other instrument be in the hands of the opposite party, and he refuse, on notice, to produce it at the trial, you may give secondary evidence of its contents (*l*).

So, if a witness, served with a *subpœna duces tecum* to produce a deed or other writing, appear at the trial, but refuse to produce the document required of him, for a reason which the judge may deem sufficient,—as if it be a deed, and he claim title under it (*m*), or if he be an attorney, and claim a lien upon it (*n*), or object that it is the title deed of his client (*o*),

(*f*) Arch. Pl. & Ev. Civ. Act. 378. 1 Arch. N. P. 21.

(*g*) *R.* v. *Morton*, 4 M. & S. 48.

(*h*) *How* v. *Hall*, 14 East, 276, n.

(*i*) See *R.* v. *Castleton*, 6 T. R. 236. *R.* v. *Piddlehinton*, 3 B. & A. 460. *R.* v. *Stourbridge*, 8 B. & C. 96.

(*k*) See *R.* v. *East Farleigh*, 6 D. & R. 147.

(*l*) See *infra.*

(*m*) *Doe* v. *Owen*, 8 Car & P. 110.

(*n*) *Doe* v. *Ross*, 7 Mees. & W. 102. *R.* v. *Hankins*, 2 Car. & K. 823.

(*o*) *Mills* v. *Oddy*, 6 Car. & P. 730. *Ditcher* v. *Kendrick*, 1 Car & P. 161.

—the judge upon application will allow the party to give secondary evidence of its contents. And where a witness, who had been subpœnaed to produce a letter, stated in his examination at the trial, that after action brought he gave it to the opposite party, who said that he wished to give it to his attorney: upon this the attorney was called upon to produce the letter, and not doing so, Ld. Kenyon allowed the other party to give parol evidence of its contents (*p*).

Notice to produce.] If you wish to prove a document, which is in the hands of the opposite party, or of his agent or deputy (*q*), or of his banker (*r*), you may give him or his attorney notice to produce it; and if, when called upon at the trial, he refuse to produce it, then upon proof of the notice, and that the document is in the possession of the party or his agent, &c. (*s*), you may give secondary evidence of its contents. Where upon a bill of indictment for the forgery of a deed being preferred, the grand jury stated to the judge that they were informed that the deed alleged to be forged was in the possession of the defendant, and asked whether they could return a true bill, if the deed were not produced before them; the judge (Parke, J.) told them, that if the deed, from being in the possession of the prisoner, or from any other sufficient cause, could not be produced before them, they might receive secondary evidence of its contents (*t*). The case was tried at the following assizes, and upon that occasion due notice was given to the prisoner to produce the deed; it was proved that his attorney had given it in evidence in an ejectment, as part of the prisoner's title, and had afterwards received it back; and Vaughan, B., held, that on the prisoner's counsel refusing to produce the deed, this was sufficient to let in secondary evidence of its contents (*u*). Where, upon an indictment for forging a deed, it was proposed to give secondary evidence of it, upon the ground that it was in possession of the prisoner, and that he had notice to produce it; but it appearing that the notice was given since the commencement of the assizes, Parke, J., held, that the notice was not sufficient, as it ought to have been given a reasonable time before the assizes; it was then proved that the prisoner, on an examination on oath upon another occasion as a witness before a magistrate, stated, that he had had the deed in question, but that thinking it of no value he

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(*p*) *Leeds* v. *Cook*, 4 Esp. 256.

(*q*) *Baldney* v. *Ritchu*, 1 Stark. 338. *Sinclair* v. *Stephenson*, 2 Bing. 514; 1 Car. & P. 582. *Taplin* v. *Atty*, 3 Bing. 164.

(*r*) *Partridge* v. *Coates*, Ry. & M. 156. *Burton* v. *Payne*, 2 Car. & P. 520.

(*s*) See *Robb* v *Starkey*, 2 Car. & K. 143.

(*t*) *R.* v. *Hunter*, 3 Car. & P. 591.

(*u*) *R.* v. *Hunter*, 4 Car. & P. 128.

burnt it; the admission of this examination in evidence was objected to, as being on oath, but as the prisoner at the time was not charged with this offence, Parke, J., admitted it, and held that the prosecutor was entitled to give secondary evidence of the deed: the secondary evidence offered was a copy of the deed; but as the person who made this copy said that he had never examined it with the original, Parke, J., said, that under these circumstances there could hardly be a satisfactory conviction; and the prisoner was accordingly acquitted (*v*).

There are some cases, however, in which a notice to produce is not necessary: first, a notice to produce a notice is not necessary in any case (*x*); secondly, in larceny of a written instrument, secondary evidence of it may be given at the trial, without giving the prisoner a notice to produce the original (*y*), in the same manner as in civil cases; in trover for a written instrument, the nature of the instrument may be proved, without giving notice to produce the original (*z*).

The following may be the form of a

Notice to Produce.

Yorkshire Summer assizes, [or, *Midsummer sessions for the East Riding of the county of York,*] 1855.

The Queen against A. B.

Take notice, that you are hereby required to produce to the court and jury, upon the trial of this indictment [*a certain*, &c., describing the instrument; or if it be an alleged forgery, say, *a certain paper writing, purporting to be*, &c.,] *and all other letters, books, papers, and writings whatsoever, in your custody or power, relating to the matters in question in this prosecution.*

Yours, &c.

G. H., the [*prosecutor's attorney.*]

To [*A. B., the above-named defendant.*]

This notice should be served such a reasonable time before the trial, as will allow of the party's searching for the instrument, for the purpose of producing it (*a*); and in country cases, for the assizes, it ought to be served before the commission day (*b*), unless it appear that the party actually has it in

(*v*) *R.* v. *Haworth*, 4 Car. & P. 254.

(*x*) See Arch. Pl. & Ev. Civ. Act. 383.

(*y*) *R.* v. *Aickles*, 1 Leach, 330.

(*z*) *Bucher et al.* v. *Jarratt*, 3 B. & P. 143. *How et al.* v. *Hall*, 14 East, 274. Per Gibbs, J., in *Scott et al.* v. *Jones*, 4 Taunt. 865.

(*a*) *Simms* v. *Kitchen*, 5 Esp. 46. *Houseman* v. *Roberts*, 5 Car. & P. 394. *Hargest* v. *Fothergill*, Id. 303. *R.* v. *Kitson*, 22 Law J. 118, m.

(*b*) *R.* v. *Haworth*, 4 Car. & P. 254. *Trist* v. *Johnson*, 1 Mo. & R. 259. *George* v. *Thompson*, 4 Dowl. 656.

the assizes town at the time. Afterwards at the trial, the party giving the notice may call for the instrument or not, at his option.

Dying Declarations.

In trials for murder or manslaughter, the dying declaration of the deceased, as to the prisoner's guilt, the infliction of the injury, &c., made at a time when he was perfectly aware of his danger, and entertained no hope of his recovery, is receivable in evidence in proof of the indictment,—the consciousness of the near approach of death being deemed equivalent to the sanction of an oath. Therefore, as a foundation for such evidence, expressions or actions of the deceased, indicating the sense he entertained of his danger (*a*), or circumstances from which the same may be collected (*b*), must first be proved, in order that the court may judge whether the deceased, at the time he made the declaration, was in that awful state of certainty as to his approaching dissolution, which the law treats as equivalent to the solemn sanction of an oath. And it is for the court to judge of this, not the jury; for it is the court that has to decide whether the evidence is receivable (*c*). Where an apothecary, upon being called in to a woman, and seeing she was in a dying state, pressed her to say what she had done, for she could not live twenty-four hours unless proper relief were afforded to her, and she then told him what she had taken and who gave it to her; but at that moment she was a good deal relieved from pain, which the apothecary attributed to mortification, and in fact she died in an hour afterwards: the judges thought that it did not sufficiently appear that she was conscious that she was in a dying state when she made this declaration; on the contrary, she seemed to think that if she told what she had taken, she might have relief and recover; they therefore held that the declaration ought not to be received (*d*). In a similar case, where a surgeon told the deceased that she would not recover, and she was aware of her danger, but said she hoped he would do what he could for her for the sake of her family: from this expression of hope, Bosanquet, J., held, that a declaration made by her at the time could not be received in evidence; that to make such a declaration evidence, it must appear that the deceased had the impression on her mind of almost immediate dissolution (*e*). But if the declaration be made under

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(*a*) *Tinkler's case*, 1 East, P. C. 354.

(*b*) 1 East, P. C. 354. *John's case*, Id. 357, 358.

(*c*) *John's case*, *supra*.

(*d*) *Welbourn's case*, 1 East, P. C. 358.

(*e*) *R.* v. *Crockett*, 4 Car. & P. 544.

such an impression, the fact of the party afterwards living for some days, will not affect the admissibility of the evidence (*f*); and on the other hand, if the deceased had not at the time that impression, his declaration is not evidence, although he may have died in an hour after making it (*g*). Where the deceased was a child of only four years old, Parke, J., held her dying declarations not to be evidence, because from her tender age it was impossible she could entertain that idea of a future state, which is necessary to make such a declaration admissible (*h*).

These dying declarations must not be confounded with the depositions taken by a justice of the peace, in writing, upon oath, in the presence of the accused, from a person really in a dying state, and who dies shortly after; for in that case, the deposition is receivable in evidence under stat. 11 & 12 Vict. c. 42, s. 17, as the deposition of a deceased witness, and it is wholly immaterial whether the witness, at the time he made it, was aware of his danger, or entertained any apprehension of death (*i*).

3. *Written Evidence.*

Acts of parliament.] Public acts of parliament are never proved, as all judges are bound judicially to take notice of them; and therefore, when we see a copy of a public act of parliament, printed by the Queen's printer, used upon a trial, we must consider it, not as evidence, but used merely to aid the judge's recollection. And the same of all local acts, containing a clause, either making them public acts, or directing the judges to notice them judicially. Private acts, or local and personal acts, not containing any such clause, may be proved, either by an examined copy of the inrolment,—or by a printed copy, purporting to be printed by the Queen's printer, or the printers of either house of parliament, without further proof (*k*). So the statutes of Ireland, previous to the union, may be proved in the courts in this country, by the copies printed and published by the Queen's printer (*l*).

(*f*) *R.* v. *Bonner*, 6 Car. & P. 386.
(*g*) *Welbourn's case*, *supra*.
(*h*) *R.* v. *Pike*, 3 Car. & P. 598.
(*i*) See *Radbourne's case*, 1 East, P. C. 356.
(*k*) 8 & 9 Vict. c. 113, s. 3.
(*l*) 41 G. 3, U. K. c. 90, s. 9.

Other records.] Records of any of the Queen's courts at Westminster may be proved by an examined copy, that is to say, by a copy that is sworn to be a true copy by a person who examined it with the original. And where an office copy was thus sworn to be examined with the original, but it appeared to have a number of contractions and abbreviations in it, "pnl este," for personal estate, and the like,—it was holden that it could not be given in evidence as a copy (*m*). So, the record of an indictment at the assizes or sessions, may be proved by an examined copy; or the record itself, if in the court, may be produced. And for this purpose the record must be made up; for the indictment itself cannot be given in evidence (*n*); nor can you prove the sentence that has been passed upon a party indicted, in any other manner than by the record or an examined copy of it (*o*). So, to prove an order of a court of quarter sessions, the record must be made up; and it is then proved by an examined copy, or by the production of the record itself. Where the sessions book was produced in such a case, but the clerk of the peace said he would have made up the record on parchment if it had been bespoken, Parke, J., refused to receive the book as evidence (*p*). But, on the other hand, where the entry of the order in the sessions book had a regular caption, and was in the present tense, and in every other respect as a record, and it was proved that no other record ever was made up, the court held that the book was legal evidence of the order (*q*). So, a conviction before a magistrate is proved by an examined copy (*r*); or the conviction may be produced. And if it recite the information, such examined copy or original will be evidence of that also (*s*).

But as proof of a former conviction, upon an indictment for a subsequent felony, it is enacted by stat. 7 & 8 G. 4, c. 28, s. 11, that a certificate containing the substance and effect only (omitting the formal part) of the indictment and conviction for the previous felony, purporting to be signed by the clerk of the court or other officer having the custody of the records of the court where the offender was first convicted, or by the deputy of such clerk or officer (for which certificate a fee of 6*s.* 8*d.* and no more shall be demanded or taken), shall upon proof of the identity of the person of the offender, be sufficient evidence of the first conviction, without proof of the signature or official character of the person appearing to have signed

(*m*) *R.* v. *Christian*, Car. & M. 388.

(*n*) *R.* v. *Smith et al.*, 8 B. & C. 341. *R.* v. *Thring*, Ry. & M. 171; 5 C. & P. 507.

(*o*) *R.* v. *Bourdon*, 2 Car. & K. 366.

(*p*) *R.* v. *Ward*, 6 Car. & P. 366.

(*q*) *R.* v. *Yeoveley*, 8 Law J. 9, m.

(*r*) See 5 Car. & P. 38.

(*s*) 5 Car. & P. 38.

the same. Where the certificate under the statute stated that the prisoner had been indicted and convicted, but did not state the judgment, Cresswell, J., held it to be insufficient (*a*).

So, as proof of a previous acquittal or conviction, it is enacted by stat. 14 & 15 Vict. c. 99, s. 13, that whenever, in any proceeding whatever, it may be necessary to prove the trial and conviction or acquittal of any person charged with any indictable offence, it shall not be necessary to produce the record of the conviction or acquittal of such person, or a copy thereof, but it shall be sufficient that it be certified or purport to be certified under the hand of the clerk of the court or other officer having the custody of the records of the court where such conviction or acquittal took place, or by the deputy of such clerk or other officer, that the paper produced is a copy of the record of the indictment, trial, conviction, and judgment, or acquittal, as the case may be, omitting the formal parts thereof. It seems therefore that the record for this purpose must be made up, although the formal parts need not be included in the certificate.

Matters quasi of record.] Bill, answer, depositions, and decree in a court of equity, are proved by examined copies (*b*). So, libel, answer, depositions and sentence in the ecclesiastical courts, are proved by examined copies (*c*). And the same as to proceedings in the Admiralty court (*d*).

As to evidence of proceedings in the county courts:—by stat. 9 & 10 Vict. c. 95, s. 111, the entries in the clerk's book, or a copy thereof bearing the seal of the court, and purporting to be signed and certified as a true copy by the clerk of the court, shall at all times be admitted in all courts and places whatsoever, as evidence of such entries and of the proceedings referred to by the same, and of the regularity of such proceedings, without further proof.

The proceedings of other inferior courts, such as the court baron, &c., are usually proved, by producing the books in which they are entered, and proving them by the clerk of the court; or, it seems, they may be proved by examined copies (*e*).

As to proceedings in the court of bankruptcy:—by stat. 12 & 13 Vict. c. 106, s. 236, any fiat, petition for adjudication of bankruptcy, petition for arrangement between a debtor and his creditors, assignment, appointment of assignees, certificate, deposition, or other proceeding or order in bankruptcy, or under any such petition for arrangement, appearing to be

(*a*) *R.* v. *Ackroyd et al.*, 1 Car. & K. 158.
(*b*) Gilb. Ev. 49, 50, 56.
(*c*) Id. 66, 67.
(*d*) Com. Dig. Evidence, C. 1.
(*e*) See Gilb. Ev. 74, 20. Com. Dig. Evidence, C. 1.

sealed with the seal of the court,—or any writing purporting to be a copy of any such document and purporting to be so sealed,—shall at all times and on behalf of all persons, and whether for the purposes of this Act or otherwise, be admitted in all courts whatever as evidence of such documents respectively, and of such proceedings and orders having respectively taken place or been made, and be deemed respectively records of the court, without any other proof thereof. And by sect. 237, all courts, judges, justices, and persons judicially acting, and other officers, shall take judicial notice of the signature of any commissioner or registrar of the court, and of the seal of the court, subscribed or attached to any judicial or official proceeding or document to be made or signed under the provisions of this Act.

Proceedings in the insolvent court (petition, schedule, order of adjudication, &c.) may be proved by an office copy, purporting to be signed by the officer in whose custody the proceedings are, and to be sealed with the seal of the court, without other proof (*f*).

Other public documents.] Inquisitions may be proved by examined copies, or the originals may be produced (*g*).

The *Gazette*, printed and published by the Queen's printer, is evidence of all acts of state (*h*).

Royal proclamations, purporting to be printed by the printers to the crown, or by the printers to either house of parliament, shall be admitted as evidence thereof by all courts, judges, justices, and others, without any proof being given that such copies were so printed (*i*).

So, the articles of war may be proved by the copy printed and published by the Queen's printer (*k*).

As to the rules of the poor law commissioners:—by stat. 7 & 8 Vict. c. 101, s. 71, a copy of any rule, order, or regulation made by the said commissioners, printed by the Queen's printer, shall, after the lapse of fourteen days from the date thereof, be received in evidence, and judicially taken notice of, and shall, until the contrary be shown, be deemed sufficient proof that such order was duly made, and is in force.

Registers of baptisms, marriages, and burials, may be proved by the register itself, or by an examined copy of it (*l*).

As to ships' registers:—by stat. 14 & 15 Vict. c. 99, s. 12, every register of a vessel kept under any of the Acts relating to the registry of British vessels, may be proved in any court of justice, or before any person having by law or by consent of

(*f*) 1 & 2 Vict. c. 110, s. 105.

(*g*) See Arch. Pl. & Ev. Civ. Act. 408, 409.

(*h*) 5 T. R. 436.

(*i*) 8 & 9 Vict. c. 113, s. 3.

(*k*) 5 T. R. 442, 446. See 4 B. & C. 304.

(*l*) Gilb. Ev. 72.

parties authority to hear, receive and examine evidence,—either by the production of the original,—or by an examined copy thereof,—or by a copy thereof purporting to be certified under the hand of the person having the charge of the original, and which person is hereby required to furnish such certified copy to any person applying at a reasonable time for the same, upon payment of the sum of one shilling; and every such register or copy,—and also every certificate of registry, granted under any of the Acts relating to the registry of British vessels, and purporting to be signed as required by law,—shall be received in evidence in any court of justice, &c., as *primâ facie* proof of all the matters contained or recited in such register, and of all the matters contained or recited in or endorsed on such certificate of registry, respectively.

And lastly, the entries in corporation books, and in the books of public offices and companies, such as the books of the Custom House, Bank, East India Company, South Sea Company, and the like, relating to matters public and general, may be proved by examined copies (*m*).

Depositions of witnesses deceased or unable to travel.] By stat. 11 & 12 Vict. c. 42, s. 17, after directing justices to take the statement on oath or affirmation of the witnesses against a person charged before them with an indictable offence, as mentioned, *ante*, vol. 1, p. 254,—it is enacted, that if afterwards upon the trial of the person accused, it shall be proved, by the oath or affirmation of any credible witness, "that any person whose deposition shall have been so taken as aforesaid, is dead, or so ill as not to be able to travel,—and if also it be proved that such deposition was taken in the presence of the person so accused, and that he or his counsel or attorney had a full opportunity of cross-examining the witness,—then, if such deposition purport to be signed by the justice, by or before whom the same purports to have been taken, it shall be lawful to read such deposition as evidence in such prosecution, without further proof thereof, unless it shall be proved that such deposition was not in fact signed by the justice purporting to sign the same." And it may be read before the grand jury, for the purpose of finding the bill, as well as before the petty jury at the trial (*n*). Where a prisoner was charged before a magistrate with wounding A. B. with intent to do him grievous bodily harm, and A. B.'s deposition was then taken; A. B. afterwards died of the wound; and the prisoner being then

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(*m*) 1 Str. 93, 307. 2 Id. 954, 1005. Hardw. 128. 2 Ld. Raym. 851. 2 Doug. 593, n. 3. Peake, 43. 4 Taunt. 787. And see 14 & 15 Vict. c. 99, s. 14.

(*n*) *R.* v. *Clements*, 20 Law J. 193, m.

tried as for murder, and the deposition of the deceased offered in evidence against him, it was holden that it might be read in evidence; for although it was not on the same technical charge, it was taken in the same case, and the prisoner had had full opportunity of cross-examination (*o*).

The statutes relating to the examination of witnesses against a prisoner before a justice of the peace, previously in force (*p*), contained no such enactment as the above; and yet it was determined in many cases, and well recognized as a rule of the common law, that in all cases of examinations of witnesses in cases of felony under those statutes, in the presence of the accused, and where he had the opportunity to cross-examine them, the deposition of a witness might be read against the accused upon his trial, if the witness were then dead (*q*), or bedridden, and not likely to be ever able to attend at the assizes (*r*), or unable to travel (*s*), or had become insane (*t*), or was kept out of the way by or on behalf of the prisoner (*u*). And it is probable, that although the cases of death and inability to travel from illness, alone, are expressly stated in this statute, as those in which the deposition of a witness may be read against a prisoner on his trial, it may be holden that such depositions may also be read in evidence, if the witness be bedridden, though otherwise not in ill health, or if he have become insane, or if he be kept out of the way by the prisoner (*v*), or by some person on his behalf, at the time of the trial.

Where an objection was made to the admission of a deposition in evidence at the trial, because the caption of it stated no offence in law, it merely stating that the prisoner was charged with obtaining money and other valuable security for money from Mary Rowe, not stating by false pretences, &c.: the judges held that there was nothing in the objection; it was not necessary that there should be a heading or caption to the deposition, to render it admissible in evidence, it was sufficient that it appeared to relate to the charge on which the prisoner was tried (*w*).

Deeds and other private written instruments.] Deeds, and all other instruments of a private nature, may be proved by the attesting witness, if there be one; or where attestation

(*o*) *R.* v. *Beeston*, 24 Law J. 5, m.; 1 We. Rep. 56.

(*p*) 1 & 2 Ph. & M. c. 13; 2 & 3 Ph. & M. c. 10, and 7 Geo, 4, c. 64.

(*q*) 2 Hawk. c. 46, s. 15. *R.* v. *Smith*, R. & Ry. 339. *R.* v. *Osborne*, 8 Car. & P. 113.

(*r*) See *R.* v. *Wilshaw*, Car. & M. 145.

(*s*) 2 Hawk. c. 46, s. 15.

(*t*) *R.* v. *Marshall et al.*, Car. & M. 147.

(*u*) 2 Hawk. c. 46, s. 15. *R.* v. *Gutteridges et al.*, Car. & P. 471, per Parke, B.

(*v*) See *R.* v. *Scaife et al.*, 20 Law J. 229, m.

(*w*) *R.* v. *Langbridge*, 2 Car. & K. 975.

is not necessary to the validity of the instrument, it may (although attested) be proved by admissions or otherwise, as if there had been no attesting witness to it (*y*). And where a deed or other writing is thirty years old, it proves itself (*z*).

The handwriting may be proved by any person who has seen the party write, or who knows his handwriting from having corresponded with him, particularly if he have acted upon the letters he received from him (*a*). Or it may be proved by comparing it with other writing of the party (*b*).

In larceny of bills of exchange or other valuable securities requiring a stamp, or upon an indictment for obtaining them by false pretences, if it appear in evidence that the bill was not duly stamped, the defendant will be acquitted; for in that case it is not a valuable security within stat. 7 & 8 G. 4, c. 29, s. 5. Therefore where a man was indicted for obtaining an order for the payment of 2*l.*, by false pretences, and the order appeared to be an unstamped cheque upon a banker, which, from the manner in which it was drawn, required a stamp, the judges held that it was not a valuable security within the meaning of the Act (*c*). Perhaps a distinction in this respect might be made between those instruments, which the commissioners of land revenue may order to be stamped on payment of a penalty, and those which they have no authority to stamp after execution. But this point has not as yet been decided. In forgery, however, it is immaterial whether the forged instrument be stamped or not, although the instrument, if genuine, would require a stamp (*d*).

4. *Parol Evidence.*

In all cases where a fact need not be proved by a record or certificate, or by deed or other written evidence (*e*), it may be proved by the parol testimony of witnesses. I shall now consider the doctrine of parol testimony, shortly, under the following heads :—

(*y*) 17 & 18 Vict. c. 125, s. 26.

(*z*) Bul. N. P. 255. Gilb. Ev. 94.

(*a*) Arch. Pl. & Ev. Civ. Act. 423, 424.

(*b*) 17 & 18 Vict. c. 125, s. 27.

(*c*) *R.* v. *Yates*, Ry. & M. 170.

(*d*) *R.* v. *Hawkswood*, 2 T. R. 606.

(*e*) See *ante*, p. 133.

Who may be Witnesses.

Quakers, &c.] Quakers may now be witnesses in criminal cases, and may make an affirmation instead of an oath (*b*); and indeed they may now make an affirmation instead of an oath, in all cases (*c*). So may Moravians (*d*). So may that class of dissenters called Separatists (*e*).

The form of the affirmation of a Quaker or Moravian is thus:—*I, A. B., being one of the people called Quakers* [or *one of the persuasion of the people called Quakers*, or *one of the United Brethren called Moravians*, as the case may be,] *do solemnly, sincerely and truly declare and affirm that*, &c.

The affirmation of the Separatists is thus:—*I, A. B., do, in the presence of Almighty God, solemnly, sincerely and truly affirm and declare that I am a member of the religious sect called Separatists, and that the taking of any oath is contrary to my religious belief, as well as essentially opposed to the tenets of that sect; and I do also, in the same solemn manner, affirm and declare that*, &c.

Jews, Turks, &c.] Jews may be witnesses, and are sworn upon the Old Testament, or rather, upon the five books of Moses.

Turks and Mahomedans of all descriptions may be witnesses, and are sworn upon the Koran.

So, Moors, Gentoos, Chinese, and in fact every person who believes in a God, and in a future state of rewards and punishments, and in the moral obligation of the oath he is about to

(*b*) 9 G. 4, c. 32.
(*c*) 3 & 4 W. 4, c. 49.
(*d*) 9 G. 4, c. 32. 3 & 4 W. 4, c. 49.
(*e*) 3 & 4 W. 4, c. 82.

take, may be witnesses (*f*), each to be sworn in such form as he deems obligatory upon his conscience. But a person who has no religious belief, which he deems binding on his conscience to speak the truth upon oath, cannot be a witness (*g*).

Infants.] Infants of the age of fourteen may be witnesses; and under that age, if they appear to have competent discretion (*h*). Where they are very young, it is usual for the judge to question them as to their belief in God, their belief as to the punishment hereafter for swearing falsely, and the like, before he allows them to be sworn (*i*). If a child be too young to be sworn as a witness, not knowing the obligation of an oath, the court will not postpone the trial, for the purpose of having the child instructed, although this may be done, under circumstances, where the child is of more mature age, but neglected education (*k*).

Deaf and dumb persons.] Deaf and dumb persons may be witnesses (*l*), if any person can be found who can interpret their signs to the court and jury upon oath (*m*), or if they can write and read writing, so that the questions and answers may be conveyed in writing.

Lunatics.] Lunatics may be witnesses in their lucid intervals (*n*); idiots or insane persons cannot (*o*). And when a lunatic is tendered as a witness, it is for the judge to examine and ascertain whether he is of competent understanding to give evidence, and is aware of the nature and obligation of an oath; if satisfied that he is, the judge should allow him to be sworn and examined (*p*).

Judge or juror.] A judge may be a witness. And it is said that he may be so, even although he is the judge to try the cause (*q*): but this at present never occurs in practice. A juror, however, may be a witness, either for or against the prisoner, and must be sworn as such (*r*); but it is right that he should inform the court of his having evidence to give in the case, before he is sworn as a juror, and indeed to decline acting as a juror in the case, if the court will permit him.

Prosecutor.] The prosecutor in criminal cases may be, and

(*f*) Bul. N. P. 292. Arch. Pl. & Ev. Civ. Act. 440.
(*g*) Bul. N. P. 292.
(*h*) 2 Hale, 278.
(*i*) See *R.* v. *Williams*, 7 Car. & P. 320.
(*k*) *R.* v. *Nicholas*, 2 Car. & K. 246.
(*l*) 2 Hawk. c. 46, s. 163.
(*m*) *R.* v. *Pollock*, MS. 1814. *R.* v. *Ruston*, 1 Leach, 408.
(*n*) Com. Dig. Testm. A. 1.
(*o*) Co. Lit. 6 b.
(*p*) *R.* v. *Hill*, 20 Law J. 222, m.
(*q*) 2 Hawk. c. 46, s. 83.
(*r*) Id.

generally is, a witness, either for the prosecution or for the defendant; even in cases of forgery, the person whose name is forged may now be a witness to sustain the prosecution (*s*). There were some cases formerly, in which the prosecutor was not allowed to be a witness, on account of the interest he had in the result of the prosecution;—in a prosecution for forcible entry on stat. 8 H. 6, c. 9, s. 3, or 21 Jac, 1, c. 15, he was not allowed to be a witness, for he was entitled to restitution if the defendant should be convicted (*t*); or in cases where the punishment was by fine only, and the prosecutor was to have the whole or a part of it, he could not be a witness (*u*);—but now, interest in the event of the prosecution no longer renders a witness incompetent, by stat. 6 & 7 Vict. c. 85, s. 1, which I am now about to notice more fully.

Persons interested in the event.] By stat. 6 & 7 Vict. c. 85, s. 1, no person, offered as a witness, shall be excluded, by reason of incapacity from interest, from giving evidence, either in person or by deposition according to the practice of the court, on the trial of any issue joined, or of any matter or question or on any inquiry arising in any proceedings civil or criminal, in any court, or before any judge, jury, sheriff, coroner, magistrate, officer or person having by law or by the consent of the parties, authority to hear, receive, and examine evidence (*v*).

Inhabitants.] The rated inhabitants of parishes were in many instances holden to be incompetent as witnesses for their parish, in any proceedings by or against it, on the ground of interest. But by stat. 54 G. 3, c. 170, s. 9, they were rendered competent in all matters relating to rates, orders of removal, settlements, and bastards; and by stat. 1 Anne, stat. 1, c. 18, s. 13, the inhabitants of a county, riding, or division, were rendered competent, in prosecutions for the non-repair of bridges, and the roads at the ends of them; and by stat. 27 G. 3, c. 29, s. 1, the inhabitants of a parish, township, or place were rendered competent witnesses to prove any offence to have been committed within their parish, &c., where the penalty was applicable to the poor of such parish, or otherwise in aid or exoneration of such parish, &c. But the stat. 6 & 7 Vict. c. 85, already mentioned (*w*), has the effect of rendering inhabitants competent witnesses in all cases for their parish, &c., although by stat. 14 & 15 Vict. c. 99, s. 3 (*x*), or

(*s*) 9 G. 4, c. 32, s. 2.
(*t*) *R.* v. *Williams*, 9 B. & C. 549.
(*u*) See *R.* v. *Blackmore*, 1 Esp. 95. *R.* v. *Cole*, Id. 217.
(*v*) 6 & 7 Vict. c. 85, s. 1.
(*w*) *Supra.*
(*x*) *Supra.*

at least by the equity of that statute, not competent or compellable to give evidence against it, where the inhabitants generally are indicted.

Husband and wife.] A wife cannot be examined as a witness for or against her husband, or a husband as a witness for or against his wife (*y*), except in the case of a personal injury committed by one upon the other, in which case (from necessity) the one may be a witness against the other (*z*). Also, no husband shall be compellable to disclose any communication made to him by his wife during the marriage; and the same as to the wife (*a*).

Attorney.] An attorney cannot disclose any confidential communication made to him, as attorney, by his client (*b*), whether made with reference to any suit then depending or in contemplation, or not (*c*). The same rule applies to barristers; but not to medical men, or other persons (*d*).

One of two defendants.] If one of two defendants plead guilty, and the other be tried, the defendant who pleaded guilty, before sentence is passed upon him, may be a witness for his companion (*e*), or against him (*f*). And now, by stat. 6 & 7 Vict. c. 85, s. 1, he may be a witness, although judgment have been pronounced upon him (*g*). Also, upon an indictment against two or more, the prosecutor may apply to have one of the defendants acquitted, in order to make him a witness for the prosecution; and the other defendants cannot object to it (*h*); or, if on the trial there be no evidence against him, he may be acquitted, and give evidence for the others (*i*).

Accomplice.] An accomplice may give evidence against those jointly guilty with him (*k*). But although in point of law they may be found guilty on his testimony alone (*l*), yet in practice it is not usual to convict, on the testimony of an

(*y*) Gilb. Ev. 133, 134. Bac. Abr. Evidence, A. 1. 2 Hawk. c. 46, ss. 70, 71. 14 & 15 Vict. c. 99, s. 3. 16 & 17 Vict. c. 83, s. 2. See *R.* v. *Sills et al.*, 1 Car. & K. 494.

(*z*) *R.* v. *Azyre*, 1 Str. 633. 2 Hawk. c. 46, s. 77. *Lord Audley's case*, 1 St. Tr. 388.

(*a*) 16 & 17 Vict. c. 83, s. 3.

(*b*) Gilb. Ev. 136. Arch. Pl. & Ev. Civ. Act. 474. Arch. New Pr. 671, 693. Hawk. c. 46, ss. 84—86.

(*c*) *Doe* v. *Harris*, 5 Car. & P. 592.

(*d*) Per Buller, J., 4 T. R. 760. 2 Hawk. c. 46, s. 92.

(*e*) *R.* v. *George et al.*, Car. & M. 111.

(*f*) *R.* v. *Hinks et al.*, 2 Car. & K. 462; 1 Den. C. C. 84.

(*g*) *Vide infra.*

(*h*) *R.* v. *Rowland et al.*, Ry. & M., N. P. C. 401.

(*i*) 2 Hawk. c. 46, s. 98.

(*k*) 2 Hawk. c. 46, ss. 94, 95. *Vide supra.*

(*l*) 2 Hawk. c. 46, s. 96. *R.* v. *Jones*, 2 Camp. 132, 131. *R.* v. *Hastings*, 7 Car. & P. 152.

accomplice, or of the wife of an accomplice (*m*), unless his or her story be confirmed in some material part by the testimony of other credible witnesses (*n*). And this confirmatory testimony must not merely relate to the manner in which the offence was committed, for that proves only that the accomplice was present at the commission of it (*o*); but it must be as to some facts or circumstances, which tend to connect the accused with the offence, or to connect the accused and the accomplice together (*p*). And where A. was indicted as principal, and B. as receiver, and A. pleaded guilty, and an accomplice was called to give evidence against B., it was holden that evidence confirming some part of the accomplice's story as to A., was no confirmation of his evidence as it affected B. (*q*). But where two are on their trial as principals, and an accomplice is admitted to give evidence against them, and his evidence is confirmed as to one of them, but not as to the other, this will warrant the jury in finding both defendants guilty (*r*). If however two or more accomplices be examined, the evidence of one is not deemed confirmed by that of the other, but the evidence of both requires to be confirmed by other testimony (*s*). However, since the passing of stat. 6 & 7 Vict. c. 85, which shall be presently mentioned, where the unconfirmed testimony of an accomplice is the only evidence against a prisoner, the judge will not withdraw the case on that account from the consideration of the jury; he will leave it to them, however, with a recommendation not to act upon it (*t*). It may sometimes also be a question whether the witness was in fact an accomplice of the defendant, so as to require confirmation; it has been holden, for instance, that a person employed by government, to mix with conspirators, and detect their designs, is not an accomplice, and does not require to have his testimony confirmed (*u*).

Persons convicted.] By stat. 6 & 7 Vict. c. 85, s. 1, no person offered as a witness shall be excluded, by reason of incapacity from crime, from giving evidence (*x*).

(*m*) *R.* v. *Neal et al.*, 7 Car. & P. 168.

(*n*) See *R.* v. *Bernard et al.*, 1 Car. & P. 88. 2 Hawk. c. 46, s. 96.

(*o*) *R.* v. *Wilkes*, 7 Car. & P. 272. *R.* v. *Webb*, 6 Id. 595. *R.* v. *Farler*, 8 Id. 106. *R.* v. *Dyke*, 8 Id. 261.

(*p*) *R.* v. *Addis*, 6 Car. & P. 388.

(*q*) *R.* v. *Moores et al.*, 7 Car. & P. 270.

(*r*) *R.* v. *Dawber et al.*, 3 Stark. 34.

(*s*) *R.* v. *Noakes*, 5 Car. & P. 326.

(*t*) *R.* v. *Skiller*, 9 Shaw's J. P. 314.

(*u*) *R.* v. *Mullens*, 12 Shaw's J. P. 776; and see *R.* v. *Dowling*, Id. 678.

(*x*) 6 & 7 Vict. c. 85, s. 1.

Number of Witnesses required.

In treason and misprision of treason, the offence must be proved by two witnesses, either both to the same overt act, or one witness to one overt act and another to another overt act of the same treason (*a*); except where an attempt to injure the person of the Queen is laid as an overt act, in which case one witness is sufficient, for by stat. 5 & 6 Vict. c. 51, s. 1, the trial in such a case must be in the same manner as in murder.

In perjury, there must be two witnesses to the same assignment (*b*). But the taking of the oath, and the facts deposed to, may be proved by one witness (*c*).

In all other cases, there is no certain number of witnesses required (*d*).

Witnesses how compelled to attend.

The witnesses for the prosecution, who attend before the magistrate at the time the prisoner is committed, are bound over by recognizance to prosecute, or to prosecute and give evidence, or to give evidence, as the case may be; and for non-attendance, their recognizance may be estreated. All other witnesses, on the one side and the other, may be compelled, if necessary, to attend, by *subpœna* issued from the crown office, or issued by the clerk of assize or clerk of the peace: if it issue from the crown office, the court of Queen's Bench may punish the party by attachment for non-attendance (*e*). If the witness be in custody on civil or criminal process, he may be brought up by writ of *habeas corpus* (*f*). See as to the mode of suing out this latter writ, *Arch. Pr. Cr. Off.* 348.

Witnesses' Expenses.

In a criminal case, a witness cannot refuse to give his testimony, until his expenses have been paid to him, even although subpœnaed on the part of the defendant (*g*); and the indictment having been removed by *certiorari*, and the

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(*a*) 7 & 8 W. 3, c. 3, ss. 2, 3.
(*b*) 2 Hawk. c. 46, s. 10.
(*c*) Id.
(*d*) 2 Hawk. c. 46, s. 3. Id. c. 25, s. 129.
(*e*) See *R.* v. *Vickery*, 16 Law J. 69, m. *R.* v. *Llanfaethly*, 23 Law J. 33, m.
(*f*) See 16 & 17 Vict. c. 30, s. 9.
(*g*) *R.* v. *James et al.*, 1 Car. & P. 322.

trial being of course in the nisi prius court at the assizes, makes no difference (*h*). But at the assizes or sessions, if the court upon application grant the prosecutor his expenses, this includes the expenses of the witnesses who have attended, either upon recognizance or *subpœna*, and the amount is immediately handed over to them.

EXPLOSIVE SUBSTANCES, INJURIES BY.

See "Malicious Injuries."

EXTORTION.

Extortion is the taking of money by an officer, by colour of his office, either where none at all is due, or where he takes more than is due, or where it is not yet due (*a*). It is a misdemeanor at common law, punishable with fine, or imprisonment, or both (*b*).

Commitment:—*On ——, at ——, being then a constable, unlawfully, corruptly, extorsively, and by colour of his said office, did extort and receive of and from one C. D., then in the custody of the said A. B., the sum of ——, as and for a fee due to him the said A. B. as such constable,* [or as the case may be]. *And you the said keeper*, &c.

FACTOR.

See "Agent."

FALSE IMPRISONMENT.

False imprisonment is a misdemeanor at common law, punishable with fine, or imprisonment, or both. The slightest detention of a party, or restraint of his personal liberty, against his will, is an imprisonment; and if that be done without law-

(*h*) *R.* v. *James et al., supra.*
(*a*) 1 Hawk. c. 68, s. 1. See *R.* v. *Higgins*, 4 Car. & P. 247.
(*b*) See 1 Hawk. c. 68, s. 5.

ful authority, it is technically termed false imprisonment. If a constable or other person arrest a man by virtue of a warrant, which is bad on the face of it, or in a case where the justice granting it had no jurisdiction, this will be a false imprisonment; so if a constable or a private person arrest a man, without warrant, in a case in which he has no authority by law to do so (*y*), he is guilty of a false imprisonment; and if a gaoler detain the party thus wrongfully arrested, without a fresh warrant legally justifying him, he will be guilty also. False imprisonment therefore is a mixed question of law and fact: whether there was a detention of the party against his will, amounting to an imprisonment, is a question of fact (*z*); and whether the authority under which it was effected was lawful, or was such as did not justify the officer or gaoler, &c. in the detention, is a question of law, depending upon the circumstance of each particular case.

Every false imprisonment is said to include an assault and battery.

Commitment:—*On ——, at ——, did assault and beat one C. D., and did then and there unlawfully and injuriously, and against the will of the said C. D., and without any legal warrant, authority, or reasonable or justifiable cause whatsoever, imprison the said C. D. And you the said keeper*, &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 293.

FALSE PRETENCES.

"If any person shall, by any false pretence, obtain from any other person any chattel, money, or valuable security, with intent to cheat or defraud any person of the same: misdemeanor, transportation for seven years, or such fine or imprisonment, or both, as the court shall award" (*a*).

The false pretence must be a statement of some pretended existing fact (*b*), and made for the purpose of inducing the prosecutor to part with his property. Pretending to be sent to the prosecutor for goods by one of his customers, or for the amount of a debt by one to whom he owed it, or for a loan of money by one of his friends, and thereby obtaining such goods or money; such a case would come within the statute. So, falsely pretending to be Mr. H. who cured Mrs. Clark at the Oxford infirmary, and thereby obtaining from a person 5*s*. for

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(*y*) See *ante*, vol. 1, p. 122, &c.

(*z*) See *Cant* v. *Parsons*, 6 Car. & P. 504.

(*a*) 7 & 8 G. 4, c. 29, s. 53.

(*b*) See *R.* v. *Henderson et al.*, Car. & M. 328.

a bottle of eye-water, was holden to be a pretence within the meaning of the statute (*c*). So, if a foreman by falsely pretending to his master that his workmen had earned to a certain amount, obtain that amount from him, whereas in fact they had earned a less sum, and he applied the difference to his own use, this was holden to be within the statute (*d*). So, if a man falsely pretend to another that he owes him a certain sum, whereas he knows that only a portion of it is due, and he obtain the whole of his demand, he may be indicted for obtaining the surplus by false pretences (*e*). So, if a man, by means of a false statement in a begging letter, obtain money from another, he may be indicted for obtaining it by false pretences (*f*). But, where a man induced a butcher to send him meat, under pretence that he would pay for it on delivery: the judges held this not to be a pretence within the meaning of the statute; it was merely a promise for future conduct (*g*). So, pretending that a certain promissory note was a good and valid security, is not a pretence within the Act (*h*). But a man pretending that his own cheque is a valid security, when it is drawn upon a banker with whom he never kept an account, is a false pretence within the statute (*i*). It is not necessary, however, that the pretence should be in words: there may be a sufficient false pretence within the meaning of the Act, by the acts and conduct of the party, without any verbal representations of a false or fraudulent nature. As where a man, in payment of some small articles, tendered a forged promissory note for 10*s*. 6*d*. in payment, and received the change: the judges held this to be a false pretence within the meaning of the statute; for the tendering of the note as a genuine instrument, was tantamount to a representation that it was so (*k*). So, where a man at Oxford, but not a member of the University, went to a tradesman's shop, wearing a commoner's cap and gown, and ordered goods, part of which he obtained at the time: this was holden by Bolland, B., to be good evidence to sustain an indictment, alleging that he falsely pretended that he was an undergraduate of the University of Oxford (*l*). So, where a man paid his addresses to a woman, and obtained from her a promise of marriage, and afterwards, upon her refusing to marry him, he threatened to bring an action against

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(*c*) *R.* v. *Bloomfield*, Car. & M. 537.

(*d*) *R.* v. *Witchell*, 2 East, P. C. 830.

(*e*) *R.* v. *Woolley*, 19 Law J. 165, m.

(*f*) *R.* v. *Jones*, 19 Law J. 162, m.

(*g*) *R.* v. *Goodall*, R. & Ry. 461.

(*h*) *R.* v. *Wikham*, 8 Law J. 87, m. See *R.* v. *Garrett*, 23 Law J. 20, m.

(*i*) *R.* v. *Parker*, 7 Car. & P. 825.

(*k*) *R.* v. *Freeth*, R. & Ry. 127; and see *R.* v. *John Story*, R. & Ry. 81.

(*l*) *R.* v. *Barnard*, 7 Car. & P. 784.

her, and thereby obtained money from her; but it turned out afterwards that he was already married, and therefore could not have maintained such an action: this was holden to amount to an implied pretence that he was unmarried, and he was convicted of obtaining the money by false pretences (*m*). Nor is it necessary that the whole of the false pretence should be made at one time (*n*). If a bill of exchange, or the like, be obtained by false pretences, it must appear to be duly stamped; for otherwise it is not a valuable security within the meaning of the Act (*o*).

It must also appear, by evidence, that the prosecutor parted with his property, by reason of the false pretence alleged (*p*), and of it alone (*q*); and that he parted with the property in the thing obtained, and not merely with the possession (*r*). And it must appear that the pretence was false to the knowledge of the defendant (*s*), and was used for the purpose of defrauding the prosecutor of his property (*t*).

It may be necessary to state, that a railway ticket has been holden to be a chattel, within the meaning of the statute (*u*).

Commitment:—*On* ——, *at* ——, *unlawfully did falsely pretend to one C. D. that* [here set out the pretence]; *by means of which said false pretence, the said A. B. then and there unlawfully did obtain from the said C. D.* ——, *of the goods and chattels of him the said C. D.*, [or *certain money, the property of the said C. D.* (*v*)] *with intent to defraud: against the form of the statute in such case made and provided. And you the said keeper*, &c.

Attempt to obtain money, &c. by false pretences.] The commitment may be the same as the above, except that instead of "did obtain," say "did attempt and endeavour to obtain" (*x*).

FINE, RECOVERY.

See "Forgery," "Personating."

(*m*) *R.* v. *Copeland*, Car. & M. 516.

(*n*) *R.* v. *Welman*, 22 Law J. 118, m.

(*o*) *R.* v. *Yates*, Ry. & M. 170.

(*p*) *R.* v. *Dale*, 7 Car. & P. 352.

(*q*) *R.* v. *Wickham*, 10 Ad. & El. 34.

(*r*) See *R.* v. *Barnes*, 20 Law J. 34, m.

(*s*) *R.* v. *Henderson et al.*, Car. & M. 328. *R.* v. *Philpotts*, Car. & K. 112. *R.* v. *Bowen*, 19 Law J. 65, m.

(*t*) *R.* v. *Henry Williams*, 7 Car. & P. 354.

(*u*) *R.* v. *Boulton*, 2 Car. & K. 917; 19 Law J. 67, m.

(*v*) See *Sill* v. *R.*, 22 Law J. 41, m.

(*x*) See *R.* v. *Marsh*, 19 Law J. 12, m.

FIRE ARMS.

See "Arms, training to the Use of."

FISH.

See "Larceny," "Malicious Injuries."

FISH POND.

See "Malicious Injuries."

FIXTURES.

See "Larceny."

FORCIBLE ENTRY AND DETAINER.

Forcible entry, what and how punishable.] By stat. 5 Ric. 2, c. 7, "the king defendeth, that none from henceforth make any entry into any lands and tenements, but in case where entry is given by the law: and in such case, not with strong hand, nor with multitude of people, but only in peaceable and easy manner: and if any man from henceforth do to the contrary, and thereof be duly convict, he shall be punished by imprisonment of his body, and thereof ransomed at the king's will." This extended only to freeholds; but by 21 Jac. 1, c. 15, it has been extended to terms for years and copyholds.

An entry may be said to be forcible, not only in respect of a violence actually done to the person of a man, as by beating him if he refuse to relinquish his possession, but also in respect of any other kind of violence in the manner of entry, as by breaking open the doors of a house whether any person be in it at the time or not, especially if it be a dwelling-

house (*a*). So, wherever a man, either by his behaviour or speech, at the time of his entry, gives those who are in possession of the tenements he claims just cause to fear that he will do them some bodily hurt if they will not give way to him: his entry is deemed forcible, whether he cause such terror, by carrying with him such an unusual number of servants, or by arming himself in such a manner as plainly intimates a design to back his pretensions by force; or by actually threatening to kill, maim or beat those who shall continue in possession; or by making use of such speeches as plainly imply a purpose of using force against those who shall make any resistance; or the like (*b*). But no entry shall be deemed forcible, from any threat to spoil another's goods, or to destroy his cattle, or to do him any other damage which is not personal (*c*). So, an entry into a house, through a window, or by opening a door with a key, is not forcible (*d*), unless accompanied with circumstances of violence or terror, such as have been above mentioned. Nor can a mere trespass be deemed a forcible entry (*e*). So if one, who pretends title to lands, barely go over them, in his way to church or to market, or for the like purpose, without doing any act which either expressly or impliedly amounts to a claim to such lands, he cannot be said to make an entry therein within the meaning of the statutes, although he be accompanied at the time by a great number of attendants, or armed (*f*). Yet in such a case, if he make an actual claim, with any circumstances of force or terror, he seems to be guilty of a forcible entry within stat. 5 R. 2, c. 7, whether his adversary actually quit the possession or not (*g*).

It may be necessary to mention that a joint tenant or tenant in common may offend against the statutes, either by forcibly ejecting or forcibly holding out his companion; for although the entry of such a tenant be lawful, so that no action of trespass will lie against him for it, yet the lawfulness of his entry in no way excuses the violence, or lessens the injury done to his companion (*h*).

All who accompany the person making a forcible entry, shall be deemed equally guilty, whether they actually enter upon the lands or not (*i*). But a man who barely agrees to a forcible entry, already made to his use, without his knowledge or privity, is not guilty, for he in no way concurred in or promoted the force (*k*).

Commitment:—*On ——, at ——, forcibly and with strong*

(*a*) 1 Hawk. c. 64, s. 26.
(*b*) 1 Hawk. c. 64, s. 27. And see *Milner* v. *Maclean*, 2 Car. & P. 17.
(*c*) 1 Hawk. c. 64, s. 28.
(*d*) Id. s. 26.
(*e*) *R.* v. *Smyth*, 5 Car. & P. 201.
(*f*) 1 Hawk. c. 64, s. 20.
(*g*) Id. s. 21.
(*h*) 1 Hawk. c. 64, s. 33.
(*i*) 1 Hawk. c. 64, s. 22.
(*k*) Id. s. 24.

hand did enter into a certain messuage with the appurtenances there situate, of which one C. D. was then [seised in his demesne as of fee, or *possessed for a certain unexpired term of years], and the said C. D. from the peaceable possession of the said messuage with the appurtenances aforesaid, forcibly and with strong hand unlawfully did expel and put out: against the form of the statute in such case made and provided. And you the said keeper,* &c.

Where a man remains in the occupation and quiet possession of the lands, &c., for three years after his forcible entry into them, restitution shall not be awarded (*l*); although he may be indicted for the forcible entry.

Forcible detainer.] The same circumstances of violence or terror which will render an entry forcible, will make a detainer forcible also (*m*). From whence it seems to follow, that whoever keeps in his house an unusual number of people, or unusual weapens, or threatens to do some bodily hurt to the former possessor, if he dare return, shall be adjudged guilty of a forcible detainer, though no attempt be made to re-enter; and it hath been said, that he also shall come under the like construction, who places men at a distance from the house, in order to assault any one who shall attempt to make an entry into it; and that he also is in like manner guilty, who shuts his doors against a justice of peace coming to view the force, and obstinately refuses to let him come in (*n*). But it is said that a man ought not to be adjudged guilty of this offence, for barely refusing to go out of a house, and continuing therein in despite of another (*o*).

Forcible detainer is punishable in the same manner as forcible entry (*p*).

Commitment:—*On ——, at ——, unlawfully did enter a certain messuage with the appurtenances there situate, of which one C. D. was [seised in his demesne as of fee,* or *possessed for a certain unexpired term of years], and the said C. D. from the peaceable possession of the said messuage, with the appurtenances aforesaid, then and there did unlawfully expel and put out: and that the said A. B. then and there, and from thence hitherto, the said C. D., from the possession of the said messuage with the appurtenances aforesaid, with force and arms and with strong hand, unlawfully and injuriously did keep out, and the said messuage and appurtenances and the possession thereof then and there unlawfully and forcibly did hold and detain, and still doth*

(*l*) 31 El. c. 11.
(*m*) 1 Hawk. c. 64, s. 30.
(*n*) Id.
(*o*) 1 Hawk. c. 64, s. 30.
(*p*) See 8 H. 6, c. 9.

hold and detain, from the said C. D.: against the form of the statute in such case made and provided. And you the said keeper, &c.

Formerly, upon a charge either of forcible entry or forcible detainer, the party kept out of possession was not a competent witness to prove the offence (*q*). But now by stat. 6 & 7 Vict. c. 85, s. 1, no person shall be excluded from giving testimony, in cases civil or criminal, by reason of his being interested in the event of the proceeding, provided he be not a party to it, and actually named in the record. And as the Queen is in law the party prosecuting, the party kept out of possession, it should seem, is no longer incompetent. But it is very doubtful if he can be a witness in the proceedings before justices upon view, *infra*. On the other hand, it has been decided that the defendant cannot impeach the title of the party dispossessed (*r*).

As to the proceedings by justices upon view, in the case of a forcible entry or detainer, see *ante*, vol. 1, p. 416.

FOREIGN SERVICE.

Engaging in foreign military service, without licence.] If any natural born subject, without leave or licence under the sign manual, or signified by order in counsel or proclamation, shall accept or agree to accept any military commission, or enter into the military service as a commissioned or non-commissioned officer, or shall enlist or agree to enlist as a soldier, or to be employed in or shall serve in any military or warlike operation, for or in the service of any foreign prince, state, potentate, colony, province or part of a province, or of any person assuming to exercise the powers of government in or over any foreign country: misdemeanor, fine or imprisonment, or both, at the discretion of the court (*a*).

(*q*) *R.* v. *Beavan*, Ry. & M. 242. *R.* v. *Williams*, 9 B. & C. 549.

(*r*) *R.* v. *Williams*, *supra*.

(*a*) 59 G. 3, c. 69, s. 2.

Commitment :—*On ——, at ——, being then and there a natural born subject of Her Majesty Queen Victoria, did unlawfully and without any leave or licence in that behalf, enter into the military service of a certain foreign state, to wit, of ——, as a commissioned officer, to wit, as a captain: against the form of the statute in such case made and provided. And you the said keeper*, &c.

The like in the naval service.] If any natural born subject, without such leave or licence as aforesaid, shall accept or agree to accept an appointment as officer, or agree to enter himself as sailor or marine, to serve in any vessel of war, or ship to be used for any warlike purpose, for or in the service of any foreign power, prince, state, potentate, colony, province or part of a province, or of any person assuming to exercise the powers of government in or over any foreign country: misdemeanor, fine or imprisonment, or both (*b*). The commitment may readily be framed, from the form under the last head.

Going abroad for the purpose of enlisting, &c.] If any natural born subject, without such leave or licence as aforesaid, shall go or agree to go to any foreign country, in order to enlist or serve in any warlike operation, whether by land or sea, in the service of any foreign prince, state, &c., either as officer, soldier, sailor or marine, although no enlistment money, pay or reward shall be given to or accepted by him: misdemeanor, fine or imprisonment, or both (*c*).

Engaging, &c. others, in such service.] If any person, in any of Her Majesty's dominions or colonies, shall engage or endeavour to engage persons to enlist or serve in any such service, as officer, soldier, sailor or marine, for or under or in aid of any foreign prince, state, &c., or to embark from any of Her Majesty's dominions with such intent; misdemeanor, fine or imprisonment, or both (*d*).

And every master of a vessel, knowingly taking or engaging to take them on board, shall forfeit 50*l*. for each person, to be recovered by action of debt (*e*), and his ship may be seized and detained by the officers at the customs, until such penalty be paid, "or until the owner of such ship or vessel shall give good and sufficient bail by recognizance," before a justice of the peace, for the payment of such penalty (*f*).

Offenders to be apprehended, &c.] Any justice of the peace,

(*b*) 59 G. 3, c. 69, s. 2.
(*c*) Id.
(*d*) 59 G. 3, c. 69, s. 2.
(*e*) Id. s. 10.
(*f*) Id. s. 6.

residing at or near to any port where any such offence shall be committed, on information on oath of any such offence, may issue his warrant for the apprehension of the offender, and cause him to be brought before himself or any other justice of the peace; and the justice before whom he is brought may examine into the nature of the offence upon oath, and may commit such person to gaol, there to remain until delivered by due course of law, unless such offender shall give bail, to the satisfaction of the said justice, to answer to any information or indictment for the said offence (*f*).

Fitting out vessels of war for foreign states.] If any person, within Her Majesty's dominions, shall, without the leave and licence of Her Majesty as aforesaid, equip, furnish, fit out or arm any ship or vessel, or endeavour to do so, or be concerned in doing so, with intent that it shall be employed in the service of any foreign prince, state, &c., or with intent to cruise or commit hostilities against any foreign prince, state, &c. not at war with this country; or shall issue or deliver any commission for such ship or vessel, with intent that it shall be so employed: misdemeanor, fine or imprisonment, or both, and the ship may be seized and forfeited (*g*).

Or, if any person within Her Majesty's dominions, without such leave and licence, shall, by adding to the number of guns, or changing them for others, or by the addition of any equipment for war, be concerned in increasing or augmenting the warlike force of any ship or vessel of war in the service of any foreign prince, state, &c.: misdemeanor, fine or imprisonment, or both (*h*).

FORESTALLING, &c.

Forestalling, or the buying up of dead victual on its way to market; engrossing, or the buying of the like in gross, for the purpose of again selling in gross; and regrating, or the purchasing of the like in a market, for the purpose of afterwards selling the same in the same market or other market in the immediate neighbourhood:—were formerly punishable as a misdemeanor at common law (*a*), and also by statute (*b*). But now these offences, both at common law, and by statute, are wholly abolished by stat. 7 & 8 Vict. c. 24.

(*f*) 59 G. 3, c. 69, s. 4.
(*g*) Id. s. 7.
(*h*) Id. s. 8.

(*a*) See *R.* v. *Waddington*, 1 East, 143, 166. 1 Hawk. c. 80.
(*b*) See 12 G. 3, c. 71.

FORGERY.

1. *Forgery of the Seals or Sign Manual.*

The seals or sign manual.] "If any person shall forge or counterfeit, or shall utter knowing the same to be forged or counterfeited, the great seal of the United Kingdom, his Majesty's privy seal, and privy signet of his Majesty, his Majesty's seals appointed by the 24th article of the union to be kept, used, and continued in Scotland, the great seal of Ireland, or the privy seal of Ireland:" treason (*a*), transportation for life or for not less than seven years, or imprisonment with or without hard labour for not more than four nor less than two years (*b*).

The impression of the seal upon wax, and not the seal itself, is what is here meant. If a good seal be taken from an old instrument, and affixed to a forged one, it is doubtful if this be a counterfeiting of the seal, and treason (*c*).

Commitment:—*On ——, at ——, the great seal of the United Kingdom to a certain instrument, purporting to be a patent and grant from the crown, falsely, deceitfully and traitorously did forge and counterfeit: against the duty of his allegiance, and against the form of the statutes in such case made and provided. And you the said keeper*, &c.

2. *Forgery of Private Securities, &c.*

Bills, cheques, bank notes, wills, exchequer bills, East India bonds.] If any person shall forge or alter, or shall offer, utter,

(*a*) 1 W. 4, c. 66, s. 2.
(*b*) 1 Vict. c. 84, s. 1.
(*c*) See *Leak's case*, 12 Co. 15.

dispose of, or put off, knowing the same to be forged or altered, any exchequer bill or exchequer debenture, or any indorsement on or assignment of any exchequer bill or exchequer debenture;—or any bond under the common seal of the united company of merchants of England, trading to the East Indies, commonly called an East India bond, or any indorsement on or assignment of any East India bond;—or any note or bill of exchange of the governor and company of the bank of England, commonly called a bank note, a bank bill of exchange, or a bank post bill, or any indorsement on or assignment of any bank note, bank bill of exchange, or bank post bill;—or any will, testament, codicil, or testamentary writing;—or any bill of exchange or any promissory note for the payment of money, or any indorsement on or assignment of any bill of exchange or promissory note for the payment of money, or any acceptance of any bill of exchange, or any undertaking, warrant, or order for the payment of money:—with intent in any of the cases aforesaid, to defraud any person whatsoever, felony (*d*), transportation for life or for not less than seven years, or imprisonment with or without hard labour for not more than four nor less than two years (*e*).

A cheque upon a banker is a warrant or order for the payment of money, within the meaning of the above section (*f*), even although it be post-dated (*g*), or although the name of the pretended drawer be written across the instrument, instead of at the end of it (*h*). So, an instrument in this form,—"Mr. Martin will be pleased to send by the bearer £10 on Mr. Hodge's account, as Mr. Hodge is very bad in bed, and cannot come himself; Martin Ralph, foreman, St. Austell Foundry:" was holden to be an order for payment of money, within this statute, although the person to whom it was directed was only clerk to the bankers, and the person by whom it purported to be drawn had no authority from Hodge to draw upon his bankers (*i*). So, a letter of credit from a house abroad upon a banker in this country, is a warrant for the payment of money within this Act (*k*). So a forged pass of a discharged prisoner, enabling him to receive certain sums from the overseers of the poor of the different parishes he will have to pass through on his route to the place of his settlement,—is an order for the payment of money, within the Act; and where a woman presented to an overseer such a forged pass, which directed the money to be paid to Wm. Henry, on *his* giving a receipt, she was holden to be guilty of uttering it (*l*).

(*d*) 1 W. 4, c. 66, s. 3.
(*e*) 1 Vict. c. 84, ss. 1, 2.
(*f*) See *R.* v. *Carter*, Car. & K. 741.
(*g*) *R.* v. *Taylor*, Id. 213.
(*h*) *R.* v. *Smith*, Id. 700.
(*i*) *R.* v. *Vivian*, Car. & K. 719.
(*k*) *R.* v. *Raake*, 8 Car. & P. 626.
(*l*) *R.* v. *McConnell et al.*, Car. & K. 371.

So is a banker's receipt for money deposited, if the depositor's name be forged upon it, so as to enable the forger to demand the money back from the banker (*m*). So, upon an indictment for forging and uttering an order for payment of money, where it was proved that the prisoner presented for payment at the counting-house of the prosecutor's a certain document in this form, "Oct. 11, 1839. This is to satisfy that R. Rogers as swept the flues, and cleaned the bilges, and repaired four bridges of the Princess Victoria. £4. 10*s*. J. Nicholson,"—and it appeared that if the document were genuine, it would entitle the prisoner to payment, upon being presented, and the amount was in fact paid to the prisoner: this was holden by Parke, B., and Bosanquet, J., to be an order for the payment of money within the statute (*n*). But a request note merely of A. upon B. for payment of money, A. having no funds of B. in his hands for which he had any right to draw,—is not an order for the payment of money, within the meaning of the statute (*o*).

A written promise to pay A. 100*l*., or such other sum as he might incur, by reason of his being surety to the sheriff for C. D., has been holden to be an undertaking for the payment of money within the meaning of it (*p*).

And it is immaterial how such instrument or writing is designated, if in law it be a will, testament, codicil, or testamentary writing, or a bill of exchange or a promissory note for the payment of money, or an indorsement on or assignment of a bill of exchange or promissory note for the payment of money, or an acceptance of a bill of exchange, or an undertaking, warrant, or order for the payment of money, within the true intent and meaning of this Act (*q*).

Forgery is the making of a false instrument, which on the face of it appears to be good and valid for the purpose for which a genuine instrument of the same nature would have been created, with intent to defraud (*r*). The instrument must appear to be complete upon the face of it; and therefore where a forged cheque (*s*), or navy bill (*t*), left a blank for the name of the payee, and where a forged order for payment of money (*u*), and a forged bill of exchange (*v*), were not directed to any person, the judges held that the parties concerned

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(*m*) *R.* v. *Atkinson*, Car. & M. 325. And see *R.* v. *Harris et al.*, Car. & K. 179.

(*n*) *R.* v. *Rogers*, 9 Car. & P. 41. And see *R.* v. *Dawson*, 20 Law J. 102, m.

(*o*) *R.* v. *Roberts*, Car. & M. 652. *R.* v. *Thorn*, Id. 206.

(*p*) *R.* v. *John Reed*, 8 Car. & P. 623.

(*q*) 1 W. 4, c. 66, s. 4.

(*r*) See *R.* v. *Jones*, 2 East, P. C. 991.

(*s*) *R.* v. *Richards*, R. & Ry. 193.

(*t*) *R.* v. *Randall*, Id. 195.

(*u*) *R.* v. *Ravenscroft*, R. & Ry 161.

(*v*) *R.* v. *Hunter*, Id. 511.

in the forgeries could not be convicted (*x*). But it has since been decided that forging a document purporting to be an order for the payment of money, though not addressed to any person, is a forgery of an order for payment of money within stat. 1 W. 4, c. 66, s. 3, (*ante*, p. 162,) if it can be explained by evidence to whom the order is in fact meant to be addressed (*y*).

In proving the forgery, the forged instrument must be produced, if it be in the hands of the prosecutor, or he can procure its production by *subpœna duces tecum* or otherwise; but if it be destroyed or lost (*z*), or be in the possession of the offender, and he refuse to produce it upon due notice to him to do so (*a*), the prosecutor may give secondary evidence of its contents. It must be proved to be forged; and the party, whose name is alleged to be forged, is now a competent witness to prove the forgery (*b*). But signing an instrument in a fictitious name is as much a forgery, as forging the name of an existing person (*c*). So if a person assume a false name, for the purpose of the fraud, and sign a written instrument, as his own, in that name, it will be forgery (*d*). Also, altering a bill in a material part, is as much a forgery as if the whole instrument were forged, and the commitment, or even the indictment, in such case, may be for a forgery of the whole instrument (*e*), or special for the alterations. Also, if a person having a blank genuine acceptance upon a bill stamp, which he is authorized by the acceptor to fill up for a certain sum, fill it up for a larger amount, he is guilty of forgery (*f*). Formerly the intent to defraud must have been laid, to defraud either the person who would have to pay the money if the instrument were genuine (*g*), or the party who would actually be defrauded if the forgery succeeded (*h*); and the forgery itself in the one case, or the attempt to utter or use the instrument in the other, was deemed conclusive evidence of it (*i*). But now it is sufficient to allege the act to have been done "with intent to defraud," without alleging the intent to be to defraud any particular person (*k*).

(*x*) See Arch. New Cr. Law, 552—555.

(*y*) *R.* v. *Snelling*, 23 Law J. 8, m.

(*z*) *How* v. *Hall*, 14 East, 276, n., per Lord Ellenborough, C. J. *R.* v. *Haworth*, 4 Car. & P. 254.

(*a*) *R.* v. *Hunter*, 3 Car. & P. 591. *R.* v. *Hunter*, 4 Id. 128.

(*b*) 9 G. 4, c. 32, s. 2.

(*c*) *R.* v. *Hampton*, Ry. & M. 255. *R.* v. *Backler*, 5 Car. & P. 118.

(*d*) *R.* v. *Marshall*, R. & Ry. 75. *R.* v. *Whiley*, Id. 90. *R.* v. *Francis*, Id. 209. *R.* v. *Peacock*, Id. 278.

(*e*) *R.* v. *Teague*, R. & Ry. 33. *R.* v. *Birkett*, Id. 86.

(*f*) *R.* v. *Minter Hart*, 7 Car. & P. 652. And see *R.* v. *Wilson*, 17 Law J. 82, m.

(*g*) *R.* v. *Mazagora*, R. & Ry. 291.

(*h*) *R.* v. *Sheppard*, R. & Ry. 169. *R.* v. *Wicks*, Id. 149. *R.* v. *Birkett*, Id. 86. *R.* v. *Crowther*, 5 Car. & P. 316; and see *R.* v. *Hanson*, Car. & M. 334.

(*i*) *R.* v. *Hill*, 8 Car. & P. 274.

(*k*) 14 & 15 Vict. c. 100, s. 8.

In proof of an uttering, the forged instrument must be produced, if forthcoming and in the power of the prosecutor, in the same manner as upon a charge of forgery (*l*). It must be proved that the party offered, uttered, disposed of, or put off (which are the words in the statute) the forged instrument, which words will be found to include every mode by which such an instrument can be used or disposed of for value. Even where a party merely exhibited a forged receipt, to the person with whom he sought to obtain credit for it, but refused to part with the possession of it: this was holden to be an uttering, within the meaning of the statute (*m*); although it would be otherwise in the case of a bill of exchange, or the like. Depositing a forged bill of exchange with a banker, as security, has been holden to be an uttering of it (*n*). Where two or three are concerned in the uttering, if they be all present and acting in it, or at such a short distance only that they may be deemed to be aiding and assisting in it, they are all equally guilty, although the instrument in fact be tendered or uttered by one of them only; but any of them who are absent at the time of the uttering, cannot be charged with uttering, although it be done by their connivance or command, or at their suggestion (*o*); although it seems that such connivance or command might support a charge of disposing or putting off the forged instrument (*p*). And if a wife utter a forged instrument, at the suggestion, but in the absence, of her husband, she may be indicted for the uttering, and he as an accessory before the fact (*q*). Besides proof of the uttering, it must be proved that the prisoner, at the time he uttered the forged instrument, knew it to be forged; which of course can be done only by proving facts and circumstances from which such guilty knowledge may be fairly implied (*r*); as, that he gave a false account of the parties, that he had other forgeries of the same kind about him when he was apprehended (*s*), that he had uttered such forgeries before (*t*), or the like. The intent to defraud may be presumed, as already mentioned (*u*).

Commitment for forging, &c.:—*On ——, at —— feloniously did forge a certain bill of exchange for* 50*l.*, [or, as the instrument may be: it is only necessary to describe it by the name or designation by which it is usually known (*x*),]

(*l*) *Vide supra.*

(*m*) *R.* v. *Radford*, Car. & K. 707. And see *R.* v. *Ion*, 21 Law J. 166, m.

(*n*) *R.* v. *Cooke*, 8 Car. & P. 582.

(*o*) *R.* v. *Badcock, Brady & Hill*, R. & Ry. 249. *R.* v. *Stewart & Dickins*, Id. 363. *R.* v. *Soares, Atkinson & Brighton*, Id. 25.

(*p*) *R.* v. *Giles*, Ry. & M. 166. *R.* v. *Palmer & Hudson*, R. & Ry. 72.

(*q*) *R.* v. *Sarah & John Morris*, R. & Ry. 270.

(*r*) See *ante*, pp. 130, 131.

(*s*) *R.* v. *Hough*, R. & Ry. 120.

(*t*) *R.* v. *Edw. Ball*, R. & Ry. 132.

(*u*) *Ante*, p. 164, and *supra.*

(*x*) 14 & 15 Vict. c. 100, s. 5.

with intent thereby to defraud: against the form of the statute in such case made and provided. And you the said keeper, &c.

See the form of an indictment for forging, *Arch. New Cr. Law*, 534, and the evidence necessary to support it, *Id.* 537, 552.

Commitment for uttering, &c.: *On ——, at ——, feloniously did offer, utter, dispose of and put off a certain forged bill of exchange* [&c. as in the last form], *with intent thereby to defraud, he the said A. B., at the time he so offered, uttered, disposed of and put off the said forged* [*bill of exchange*] *as aforesaid, well knowing the same to be forged: against the form of the statute in such case made and provided. And you the said keeper*, &c.

See the form of an indictment for uttering, *Arch. New Cr. Law*, 534, and the evidence necessary to support it, *Id.* 547, 556, &c.

Making or having paper for forged exchequer bills.] Every person who shall make, or cause or procure to be made, or shall aid or assist in making, or shall knowingly have in his possession, not being legally authorized by the commissioners of excise or commissioners of Her Majesty's treasury, and without lawful excuse (the proof whereof shall be on the person accused), any instrument having therein any words, letters, figures, marks, lines, or devices peculiar to and appearing in the substance of any paper provided or to be provided or used for exchequer bills, or any machinery for working any threads into the substance of any paper, or any such thread, and intended to imitate such words, letters, figures, marks, lines, threads or devices, or any plate peculiarly employed for printing exchequer bills, or any die peculiarly used for preparing any such plate, or for sealing such exchequer bills, or any plate or die intended to imitate such plates or dies respectively;—and also every person, except as before excepted, who shall make, or cause or procure to be made, or aid or assist in making, any paper, in the substance of which shall appear any words, letters, figures, marks, lines, threads or other devices, peculiar to and appearing in the substance of any paper provided, or to be provided or used for exchequer bills, or any part of such words, letters, figures, marks, lines, threads or other devices, and intended to imitate the same;—and also every person, except as before excepted, who shall knowingly have in his possession, without lawful excuse (the proof whereof shall lie on the person accused) any paper whatever, in the substance whereof shall appear any such words, letters, figures, marks, lines, threads, or devices as aforesaid, or any part of such words, letters, figures, marks, lines, threads, or devices, and intended to imitate the same;—and also every person, except

as before excepted, who shall cause or assist in causing any such words, letters, figures, marks, lines, threads, or devices as aforesaid, or any part of such words, letters, figures, marks, lines, threads or other devices, and intended to imitate the same, to appear in the substance of any paper whatever, or who shall take or assist in taking any impression of any such plate or die as aforesaid,—shall be guilty of felony (*a*).

And every person, not lawfully authorized, and without lawful excuse, (the proof whereof shall lie on the person accused,) who shall purchase or receive or take, and have in his custody, any paper manufactured and provided by or under the directions of the commissioners of excise or commissioners of Her Majesty's treasury, for the purpose of being used as exchequer bills, before such paper shall have been duly stamped, signed, and issued for public use, or any such plate or die as aforesaid,—shall for every such offence be guilty of a misdemeanor; and being convicted thereof, shall, at the discretion of the court before whom he shall be tried, be imprisoned for any period not more than three years nor less than six calendar months (*b*).

Deeds, bonds, receipts, orders for goods, &c.] And "if any person shall forge or alter, or shall offer, utter, dispose of, or put off, knowing the same to be forged or altered, any deed, bond or writing obligatory,—or any court roll or copy of any court roll relating to any copyhold or customary estate,—or any acquittance or receipt either for money or goods, or any accountable receipt either for money or goods, or for any note, bill, or other security for payment of money,—or any warrant, order, or request for the delivery or transfer of goods, or for the delivery of any note, bill or other security for payment of money,—with intent to defraud any person whatsoever:" felony, transportation for life or for not less than seven years, or imprisonment with or without hard labour for not more than four years nor less than two (*c*). Where a request for the delivery of goods was in this form, "Mr. Turner, Please let the lad have a hat about 9*s*., and I will answer for the money, Ed. Barrett,"—and it was objected that it was a guarantie, and not an instrument within the Act: Gurney, B., held that although it purported to be a guarantie, it was also a request for the delivery of goods; and the prisoner was convicted (*d*). So, where the prisoner was indicted for forging and uttering a request for the delivery of goods, in this form,—"Aug. 3—39—One 16 in. helmet scoop, one 4 qt. kettle, James Haywood:" this was holden by all the judges to be a request for the delivery of goods within the statute,

(*a*) 5 & 6 Vict. c. 66, s. 9.
(*b*) Id. s. 10.
(*c*) 1 W. 4, c. 66, s. 10.
(*d*) *R.* v. *White*, 9 Car. & P. 282.

although it was not addressed to any person (*f*). And an order to be allowed to taste wine at the London docks, has been holden to be an order for the delivery of goods, within the meaning of the above section (*g*). As to the forgery of an administration bond, see *R.* v. *Barber, Fletcher & Dorey*, Car. & K. 434.

As to the forgery of a receipt:—it is not necessary that it should be in any particular form of words: any words which indicate that the party whose name is forged has received the money,—such as "settled" (*h*),—"paid" (*i*),—"received" or "recd." (*k*),—"received from Mr. Bendon, due to Mr. Warman, 17*s.*, settled" (*l*),—"16*l.* 15*s.* 6*d.*, for the high constable, James Hughes" (*m*),—have all been holden to be receipts, within the meaning of the Act. But where the instrument was in this form,—"Wm. Chinnery, Esq., paid to X. Tomson, the sum of eight pounds, Feb. 13, 1812," without any name subscribed to it; and it was proved that the prisoner gave it to Mr. Chinnery's housekeeper, as the receipt of Thomas Thompson: the judges held that this was not a receipt, within the meaning of the statute; it was an assertion that Chinnery had paid the money, but did not import an acknowledgment thereof by Thompson (*n*). And where the indictment charged the defendant with forging a receipt for the payment of money, and the receipt was on the back of an order for payment of money, thus,—"received for R. Aickman, G. Arscott," the latter being the prisoner's real name: Bolland, B., and Littledale, J., held this not to be a forged receipt for the payment of money (*o*).

The commitment may readily be framed from the forms, *supra*.

Forgeries of foreign instruments.] "Where the forging or altering any writing or matter whatsoever, or the offering, uttering, disposing of, or putting off any writing or matter whatsoever, knowing the same to be forged or altered, is in this Act expressed to be an offence,—if any person shall, in that part of the United Kingdom called England, forge or alter, or offer, utter, dispose of, or put off, knowing the same to be forged or altered, any such writing or matter,—in whatsoever place or county out of England (whether under the dominion

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(*f*) *R.* v. *Pulbrook*, 9 Car. & P. 37. See *R.* v. *Walters*, Car. & M. 588.

(*g*) *R.* v. *Illidge*, 18 Law J. 179.

(*h*) *R.* v. *Martin*, Ry. & M. 483. And see *R.* v. *Thompson*, 2 Leach, 910.

(*i*) *R.* v. *Houseman*, 8 Car. & P. 180.

(*k*) See *R.* v. *Barton*, Ry. & M. 141.

(*l*) *R.* v. *Inder*, 2 Car. & K. 635.

(*m*) *R.* v. *Boardman*, 2 Mo. & R. 147.

(*n*) *R.* v. *Harvey*, R. & Ry. 227.

(*o*) *R.* v. *Arscott*, 6 Car. & P. 408.

of his Majesty or not) such writing or matter may purport to be made or may have been made, and in whatever language or languages the same or any part thereof may be expressed,—every such person, and every person aiding, abetting, or counselling such person, shall be deemed to be an offender within the meaning of this Act, and shall be punishable thereby in the same manner as if the writing or matter had purported to be made or had been made in England;—and if any person shall in England forge or alter, or offer, utter, dispose of, or put off, knowing the same to be forged or altered, any bill of exchange, or any promissory note for the payment of money, or any indorsement on or assignment of any bill of exchange, or promissory note for the payment of money, or any acceptance of any bill of exchange, or any undertaking, warrant, or order for the payment of money, or any deed, bond, or writing obligatory for the payment of money, (whether such deed, bond, or writing obligatory shall be made only for the payment of money, or for the payment of money together with some other purpose,)—in whatever place or country out of England (whether under the dominion of his Majesty or not) the money payable or secured by such bill, note, undertaking, warrant, order, deed, bond, or writing obligatory may be or may purport to be payable, and in whatever language or languages the same respectively or any part thereof may be expressed, and whether such bill, note, undertaking, warrant, or order be or be not under seal:—every such person, and every person aiding, abetting, or counselling such person, shall be deemed to be an offender within the meaning of this Act, and shall be punishable thereby in the same manner as if the money had been payable or had purported to be payable in England" (*p*).

3. *As to Forged Bank Notes, Bank Note Paper, &c.*

Forging bank of England notes.] The forgery of a bank of

(*p*) 1 W. 4, c. 66, s. 30.

England note, bank post bill, &c., is a felony, and punishable in the same manner as the forgery of bills of exchange, wills, &c. (*q*) And the signature of the cashier of the bank, to such notes, &c., may now be effected by machinery, instead of being written (*r*).

Buying or having forged bank notes.] "If any person shall, without lawful excuse, the proof whereof shall lie upon the party accused, purchase or receive from any other person, or have in his custody or possession, any forged bank note, bank bill of exchange, or bank post bill, or blank bank note, blank bank bill of exchange, or blank bank post bill, knowing the same respectively to be forged:"—felony, transportation for fourteen years (*s*).

Making paper for forged blank notes, or moulds.] And if "any person shall, without the authority of the governor and company of the bank of England, to be proved by the party accused, make or use, or shall, without lawful excuse, to be proved by the party accused, knowingly have in his custody or possession, any frame, mould, or instrument for the making of paper with the words 'Bank of England' visible in the substance of the paper, or for the making of paper with curved or waving bar lines, or with the laying wire lines thereof in a waving or curved shape, or with any number, sum, or amount, expressed in a word or words in Roman letters, visible in the substance of the paper;—or if any person shall, without such authority, to be proved as aforesaid, manufacture, use, sell, expose to sale, utter or dispose of, or shall, without lawful excuse, to be proved as aforesaid, knowingly have in his custody or possession, any paper whatsoever with the words 'Bank of England' visible in the substance of the paper, or any paper with curved or waving bar lines, or with the laying wire lines thereof in a waved or curved shape, or with any number, sum, or amount, expressed in a word or words in Roman letters appearing visible in the substance of the paper; —or if any person, without such authority, to be proved as aforesaid, shall by any art or contrivance, cause the words 'Bank of England' to appear visible in the substance of any paper, or cause the numerical sum or amount of any bank note, bank bill of exchange, or bank post bill, blank bank note, blank bank bill of exchange, or blank bank post bill, in a word or words in Roman letters, to appear visible in the substance of the paper whereon the same shall be written or printed:"—felony, transportation for fourteen years (*t*).

Provided that nothing herein contained shall prevent any

(*q*) See 1 W. 4, c. 66, s. 3, and 1 Vict. c. 84. ss. 1, 2, *ante*, p. 162.

(*r*) 16 & 17 Vict. c. 2.

(*s*) 1 W. 4, c. 66, s. 12.

(*t*) Id. s. 13.

person from issuing any bill of exchange or promissory note having the amount thereof expressed in guineas, or in a numerical figure or figures denoting the amount thereof in pounds sterling appearing visible in the substance of the paper, nor prevent any person from making, using or selling any paper having waving or curved lines, or any other devices in the nature of watermarks, visible in the substance of the paper, not being bar lines or laying wire lines, provided the same are not so contrived as to form the groundwork or texture of the paper, or to resemble the waving or curved laying wire lines or bar lines, or the watermarks, of the paper used by the bank of England (*u*).

Making, having, or using plates for bank notes, or the blank notes.] And "if any person shall engrave or in anywise make upon any plate whatever, or upon any wood, stone, or other material, any promissory note or bill of exchange, or blank promissory note or blank bill of exchange, or part of a promissory note or bill of exchange, purporting to be a bank note, bank bill of exchange, or bank post bill, or blank bank note, blank bank bill of exchange, or blank bank post bill, or part of a bank note, bank bill of exchange, or bank post bill, without the authority of the governor and company of the bank of England, to be proved by the party accused;—or if any person shall use such plate, wood, stone, or other material, or any other instrument or device, for the making or printing any bank note, bank bill of exchange, or bank post bill, or blank bank note, blank bank bill of exchange, or blank bank post bill, or part of a bank note, bank bill of exchange, or bank post bill, without such authority, to be proved as aforesaid;—or if any person shall, without lawful excuse, the proof whereof shall lie on the party accused, knowingly have in his custody or possession any such plate, wood, stone, or other material, or any such instrument or device;—or if any person shall, without such authority, to be proved as aforesaid, knowingly offer, utter, dispose of, or put off any paper upon which any blank bank note, blank bank bill of exchange, or blank bank post bill, or part of a bank note, bank bill of exchange, or bank post bill, shall be made or printed;—or if any person shall, without lawful excuse, to be proved as aforesaid, knowingly have in his custody or possession any such paper:"—felony, transportation for fourteen years (*x*).

And "if any person shall engrave or in anywise make upon any plate whatever, or upon any wood, stone, or other material, any word, number, figure, character, or ornament, the impression taken from which shall resemble, or apparently be intended to resemble, any part of a bank note, bank bill of

(*u*) 1 W. 4, c. 66, s. 14.

(*x*) 1 W. 4, c. 66, s. 15.

exchange, or bank post bill, without the authority of the governor and company of the bank of England, to be proved by the party accused;—or if any person shall use any such plate, wood, stone, or other material, or any other instrument or device, for the making upon any paper or other material the impression of any word, number, figure, character, or ornament which shall resemble, or apparently be intended to resemble, any part of a bank note, bank bill of exchange, or bank post bill, without such authority, to be proved as aforesaid;—or if any person shall, without lawful excuse, the proof whereof shall lie on the party accused, knowingly have in his custody or possession any such plate, wood, stone, or other material, or any such instrument or device;—or if any person shall, without such authority, to be proved as aforesaid, knowingly offer, utter, dispose of, or put off any paper or other material upon which there shall be an impression of any such matter as aforesaid;—or if any person shall, without lawful excuse, to be proved as aforesaid, knowingly have in his custody or possession any paper or other material upon which there shall be an impression of any such matter as aforesaid:"—felony, transportation for fourteen years (*y*).

Making other bankers' paper or moulds.] And "if any person shall make or use any frame, mould, or instrument for the manufacture of paper, with the name or firm of any person or persons, body corporate, or company, carrying on the business of bankers (other than the bank of England) appearing visible in the substance of the paper, without the authority of such person or persons, body corporate, or company, the proof of which authority shall lie on the party accused;—or if any person shall, without lawful excuse, the proof whereof shall lie on the party accused, knowingly have in his custody or possession any such frame, mould, or instrument;—or if any person shall, without such authority, to be proved as aforesaid, manufacture, use, sell, expose to sale, utter, or dispose of, or shall, without lawful excuse, to be proved as aforesaid, knowingly have in his custody or possession, any paper in the substance of which the name or firm of any such person or persons, body corporate, or company, carrying on the business of bankers, shall appear visible;—or if any person shall, without such authority, to be proved as aforesaid, cause the name or firm of any such person or persons, body corporate, or company, carrying on the business of bankers, to appear visible in the substance of the paper upon which the same shall be written or printed:"—felony, transportation for not more than fourteen years, nor less than seven, or imprisonment with or

(*y*) 1 W. 4, c. 66, s. 16.

without hard labour for not more than three years, nor less than one (z).

Making, using, &c., plates for other bankers' notes.] And "if any person shall engrave or in anywise make upon any plate whatever, or upon any wood, stone, or other material, any bill of exchange or promissory note for the payment of money, or any part of any bill of exchange or promissory note for the payment of money, purporting to be the bill or note, or part of the bill or note of any person or persons, body corporate, or company, carrying on the business of bankers, (other than and except the bank of England,) without the authority of such person or persons, body corporate, or company, the proof of which authority shall lie on the party accused;—or if any person shall engrave or make upon any plate whatever, or upon any wood, stone, or other material, any word or words resembling, or apparently intended to resemble, any subscription subjoined to any bill of exchange or promissory note for the payment of money, issued by any such person or persons, body corporate, or company, carrying on the business of bankers, without such authority, to be proved as aforesaid;—or if any person shall, without such authority, to be proved as aforesaid, use, or shall, without lawful excuse, to be proved by the party accused, knowingly have in his custody or possession any plate, wood, stone, or other material upon which any such bill or note, or part thereof, or any word or words resembling, or apparently intended to resemble, such subscription, shall be engraved or made;—or if any person shall, without such authority, to be proved as aforesaid, knowingly offer, utter, dispose of, or put off, or shall, without lawful excuse, to be proved as aforesaid, knowingly have in his custody or possession any paper upon which any part of such bill or note, or any word or words resembling, or apparently intended to resemble, any such subscription, shall be made or printed:"—felony, transportation for not more than fourteen years or less than seven, or imprisonment with or without hard labour for not more than three years nor less than one (a). This section has been holden to extend to the forgery in this country of promissory notes, purporting to be the notes of certain bankers in Canada, and is not confined to the notes of bankers in England (b).

Making, using, &c., plates for notes of foreign banks, &c.] "If any person shall engrave or in anywise make upon any plate whatever, or upon any wood, stone, or other material,

(z) 1 W. 4, c. 66, s. 17.
(a) Id. s. 18.
(b) *R.* v. *Hannon*, 9 Car. & P. 11, 14, by all the judges.

any bill of exchange, promissory note, undertaking, or order for payment of money, or any part of any bill of exchange, promissory note, undertaking, or order for payment of money, in whatever language or languages the same may be expressed, and whether the same shall or shall not be or be intended to be under seal, purporting to be the bill, note, undertaking, or order, or part of the bill, note, undertaking, or order, of any foreign prince or state, or of any minister or officer in the service of any foreign prince or state, or of any body corporate, or body of the like nature, constituted or recognized by any foreign prince or state, or of any person or company of persons resident in any country, not under the dominion of his Majesty, without the authority of such foreign prince or state, minister or officer, body corporate or body of the like nature, person or company of persons, the proof of which authority shall lie on the party accused;—or if any person shall, without such authority, to be proved as aforesaid, or shall, without lawful excuse, to be proved by the party accused, knowingly have in his custody or possession any plate, stone, wood, or other material, upon which any such foreign bill, note, undertaking, or order, or any part thereof, shall be engraved or made;—or if any person shall, without such authority, to be proved as aforesaid, knowingly offer, utter, dispose of, or put off, or shall, without lawful excuse, to be proved as aforesaid, knowingly have in his custody or possession any paper, upon which any part of such foreign bill, note, undertaking, or order shall be made or printed:"—felony, transportation for not more than fourteen years or less than seven, or imprisonment with or without hard labour for not more than three years nor less than one (*c*).

Possession of them, what shall be deemed.] Where the having any matter in the custody or possession of any person is in this Act expressed to be an offence, if any person shall have any such matter in his personal custody or possession, or shall knowingly and wilfully have any such matter in any dwelling-house or other building, lodging, apartment, field, or other place, open or inclosed, whether belonging to or occupied by himself or not, and whether such matter shall be so had for his own use or for the use or benefit of another:—every such person shall be deemed and taken to have such matter in his custody or possession within the meaning of this Act (*d*).

(*c*) 1 W. 4, c. 66, s. 19. (*d*) Id. s. 28.

4. *As to the Public Funds.*

Forging transfers of stock, or powers of attorney, &c.] And "if any person shall forge or alter, or shall utter knowing the same to be forged or altered, any transfer of any share or interest of or in any stock, annuity, or other public fund, which now is or hereafter may be transferable at the Bank of England or at the South Sea House, or of or in the capital stock of any body corporate, company, or society which now is or hereafter may be established by charter or Act of parliament,—or shall forge or alter, or shall utter, knowing the same to be forged or altered, any power of attorney or other authority to transfer any share or interest of or in any such stock, annuity, public fund, or capital stock as is hereinbefore mentioned, or to receive any dividend payable in respect of any such share or interest,—or shall demand or endeavour to have any such share or interest transferred, or to receive any dividend payable in respect thereof, by virtue of any such forged or altered power of attorney or other authority, knowing the same to be forged or altered, with intent in any of the several cases aforesaid to defraud any person whatsoever:"—felony (*e*), transportation for life or not less than seven years, or imprisonment, with or without hard labour, for not more than four or less than two years (*f*).

The commitment may easily be framed from the first of the forms, *ante*, p. 165.

Forging the attestation of such power of attorney.] And "if any person shall forge the name or handwriting of any person as or purporting to be a witness attesting the execution of any power of attorney or other authority to transfer any share or interest of or in any such stock, annuity, public fund, or capital stock as is hereinbefore mentioned, or to receive any dividend payable in respect of any such share or interest,—or shall utter any such power of attorney or other authority,

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(*e*) 1 W. 4, c. 66, s. 6.

(*f*) 1 Vict. c. 84, s. 1.

with the name or handwriting of any person forged thereon as an attesting witness, knowing the same to be forged :"—felony, transportation for seven years, or imprisonment for not more than two years nor less than one (*h*).

The commitment may readily be framed from the forms, *ante*, p. 165.

Personating the owner of stock.] "If any person shall falsely and deceitfully personate any owner of any such share, interest or dividend as aforesaid, and thereby transfer any share or interest belonging to such owner, or thereby receive any money due to such owner as if such person were the true and lawful owner :"—felony (*i*), transportation for life or not less than seven years, or imprisonment with or without hard labour for not more than four, nor less than two years (*k*).

And "if any person shall falsely and deceitfully personate any owner of any share or interest of or in any stock, annuity, or other public fund which now is or hereafter may be transferable at the Bank of England or at the South Sea House, or any owner of any share or interest of or in the capital stock of any body corporate, company, or society which now is or hereafter may be established by charter or Act of parliament, or any owner of any dividend payable in respect of any such share or interest as aforesaid, and shall thereby endeavour to transfer any share or interest belonging to any such owner, or thereby endeavour to receive any money due to any such owner as if such offender were the true and lawful owner :"—felony, transportation for life or not less than seven years, or imprisonment with or without hard labour for not more than four years nor less than two years (*l*).

Making false entries in the books as to the public funds.] If any person shall wilfully make any false entry in, or wilfully alter any word or figure in, any of the books of account kept by the Bank of England or by the South Sea Company, in which books the accounts of the owners of any stock, annuities, or other public funds which now are or hereafter may be transferable at the Bank of England or at the South Sea House, shall be entered and kept;—or shall in any manner wilfully falsify the accounts of such owners in any of the said books,—with intent in any of the cases aforesaid to defraud any person whatsoever;—or if any person shall wilfully make any transfer of any share or interest of or in any stock, annuity, or other public fund, which now is or hereafter may be transferable at the Bank of England or at the South Sea House, in the name of any person not being the true and lawful owner of such

(*h*) 1 W. 4, c. 66, s. 8.
(*i*) Id. s. 6.
(*k*) 1 Vict. c. 84, s. 1.
(*l*) 1 W. 4, c. 66, s. 6.

share or interest, with intent to defraud any person whatsoever:—felony (*m*), transportation for life or not less than seven years, or imprisonment with or without hard labour for not more than four nor less than two years (*n*).

The commitment may easily be framed from the first of the forms, *ante*, p. 165.

Making out false dividend warrants.] And if any clerk, officer, or servant of, or other person employed or intrusted by, the Bank of England, or South Sea Company, shall "knowingly make out or deliver any dividend warrant for a greater or less amount than the person or persons, on whose behalf such dividend warrant shall be made out, is or are entitled to, with intent to defraud any person whatsoever:"—felony, transportation for seven years, or imprisonment with or without hard labour for not more than two years, nor less than one (*o*).

The commitment may readily be framed from the forms, *ante*, p. 165.

5. *As to Public Documents.*

Acknowledging recognizances, fines, &c. in another's name.] "If any person shall, before any court, judge, or other person lawfully authorized to take any recognizance or bail, acknowledge any recognizance or bail in the name of any other person not privy or consenting to the same, whether such recognizance or bail in either case be or be not filed;—or if any person shall, in the name of any other person not privy or consenting to the same, acknowledge any fine, recovery, cognovit actionem, or judgment, or any deed to be enrolled:"—felony, transportation for life, or for not less than seven years, or imprisonment, with or without hard labour, for not more than four years nor less than two (*a*).

The commitment may readily be framed from the first of the forms, *ante*, p. 165.

False entries in registers of baptism, &c.] "If any person shall knowingly and wilfully insert, or cause or permit to be inserted, in any register of baptisms, marriages, or burials,

(*m*) 1 W. 4, c. 66, s. 5.
(*n*) 1 Vict. c. 84, s. 1.
(*o*) 1 W. 4, c. 66, s. 9.
(*a*) Id. s. 11.

which hath been or shall be made or kept by the rector, vicar, curate, or officiating minister of any parish, district parish, or chapelry in England, any false entry of any matter relating to any baptism, marriage, or burial, or shall forge or alter in any such register any entry of any matter relating to any baptism, marriage, or burial;—or shall utter any writing as and for a copy of an entry in any such register of any matter relating to any baptism, marriage, or burial, knowing such writing to be false, forged, or altered;—or if any person shall utter any entry in any such register of any matter relating to any baptism, marriage, or burial, knowing such entry to be false, forged, or altered, or shall utter any copy of such entry, knowing such entry to be false, forged, or altered,—or shall wilfully destroy, deface, or injure, or cause or permit to be destroyed, defaced, or injured, any such register or any part thereof;—or shall forge or alter, or shall utter, knowing the same to be forged or altered, any licence of marriage:"—felony, transportation for life, or not less than seven years, or imprisonment with or without hard labour for not more than four years, nor less than two (*c*).

But no rector, vicar, curate, or officiating minister of any parish, district parish, or chapelry, who shall discover any error in the form or substance of the entry in the register of any baptism, marriage, or burial respectively by him solemnized, shall be liable to any of the penalties herein mentioned, if he shall, within one calendar month after the discovery of such error, in the presence of the parent or parents of the child baptized, or of the parties married, or in the presence of two persons who shall have attended at any burial, or in the case of the death or absence of the respective parties aforesaid, then in the presence of the churchwardens or chapel-wardens, correct the entry which shall have been found to be erroneous according to the truth of the case, by entry in the margin of the register wherein such erroneous entry shall have been made, without any alteration or obliteration of the original entry, and shall sign such entry in the margin, and add to such signature the day of the month and year when such correction shall be made; and such correction and signature shall be attested by the parties in whose presence the same are directed to be made as aforesaid (*d*).

Also by stat. 6 & 7 W. 4, c. 86, which established a general registry of all births, marriages, and burials in England, and which provided that books should be kept by the registrars for the purpose of registering them, it is enacted, by sect. 43, that "every person who shall wilfully destroy or injure, or

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(*c*) 1 W. 4, c. 66, s. 20. See *R.* v. *Bowen*, 1 Car. & K. 501.

(*d*) 1 W. 4, c. 66, s. 21.

cause to be destroyed or injured, any such register book, or any part or certified copy of any part thereof,—or shall falsely make or counterfeit, or cause to be falsely made or counterfeited, any part of any such register book or certified copy thereof,—or shall wilfully insert or cause to be inserted in any register book or certified copy thereof, any false entry of any birth, death, or marriage,—or shall wilfully give any false certificate, or shall certify any writing to be a copy or extract of any register book, knowing the same register to be false in any part thereof,—or shall forge or counterfeit the seal of the register office:"—felony (*e*), transportation for seven years, or imprisonment, with or without hard labour, for not more than two years (*f*). The stat. 6 & 7 W. 4, c. 86, s. 44, contains a similar provision for the correction of errors, as the above sect. 21 of stat. 1 W. 4, c. 66.

Making false entries in copies sent to the registrar.] "And if any person shall knowingly and wilfully insert, or cause or permit to be inserted, in any copy of any register to be transmitted to the registrar of the diocese, any false entry of any matter relating to any baptism, marriage, or burial, or shall forge or alter, or shall utter, knowing the same to be forged or altered, any copy of any register so to be transmitted as aforesaid, or shall knowingly and wilfully sign or verify any copy of any register so to be transmitted as aforesaid, which copy shall be false in any part thereof, knowing the same to be false:"—felony, transportation for seven years, or imprisonment with or without hard labour for not more than two years or less than one (*g*).

6. *Prosecution of Offences, &c.*

Offences where to be tried, &c.] In all cases of forgery, whether at common law or by virtue of any statute, the offence may be dealt with, tried, and laid and charged to have been committed, in any county or place in which the offender shall be apprehended or be in custody; and every accessory before or after the fact to any such offence, if the same be a felony, and every person aiding, abetting, or counselling the commis-

(*e*) 6 & 7 W. 4, c. 86, s. 43.
(*f*) 7 & 8 G. 4, c. 28, s. 8.
(*g*) 1 W. 4, c. 66, s. 22.

sion of any such offence, if the same be a misdemeanor, may be dealt with, indicted, tried, and punished, and 'his offence laid and charged to have been committed, in any county or place in which the principal offender may be tried (*a*).

And where any offence punishable under this Act shall be committed within the jurisdiction of the Admiralty, it shall be dealt with, inquired of, tried, and determined in the same manner as any other offence committed within that jurisdiction (*b*).

See the form of an indictment for forgery, *Arch. New Cr. Law*, 534, and the evidence necessary to support it, *Id.* 536, 537, 552; and the form of an indictment for uttering a forged instrument, *Id.* 534, and the evidence necessary to support it, *Id.* 536, 547, 552.

Principals and accessories.] Every principal in the second degree, and every accessory before the fact, shall be punishable in the same manner as the principal in the first degree; an every accessory after the fact to any felony punishable under this Act, shall, on conviction, be liable to be imprisoned for any term not exceeding two years (*c*).

Hard labour, &c.] Where any person shall be convicted of any offence, punishable under this Act with imprisonment, the court may sentence him to be imprisoned, with or without hard labour, in the common gaol or house of correction, and also direct that the offender shall be kept in solitary confinement for the whole or any portion or portions of such imprisonment, as to the court in its discretion shall seem meet (*d*).

FRAMEWORK KNITTERS.

See "Larceny," "Malicious Injuries."

FRUIT AND FRUIT TREES.

See "Larceny," "Malicious Injuries."

(*a*) 1 W. 4, c. 66, s. 24.
(*b*) Id. s. 27.
(*c*) 1 W. 4, c. 66, s. 25.
(*d*) Id. s. 26.

GAME.

Killing hares or conies in warrens, &c.] If any person shall unlawfully and wilfully, in the night-time, take or kill any hare or coney in any warren or ground lawfully used for the breeding or keeping of hares or conies, (whether the same be inclosed or not): every such offender shall be guilty of a misdemeanor, and being convicted thereof shall be punished accordingly (*a*).

Commitment for taking and killing conies, &c., in the night: — *On* ——, *in the night-time of the said day, at* ——, *in a certain warren and ground of C. D., there situate, and then lawfully used for the breeding and keeping of conies* [or *hares*] *did, by night as aforesaid, in the said warren and ground, unlawfully and wilfully take* [*and kill*] *three conies* [or *hares*] *then and there being found: against the form of the statute in such case made and provided. And you the said keeper*, &c.

As to the like offence in the day-time, see *ante*, vol. 1, p. 457.

Where it appeared that the prisoner set several wires in a warren, for the purpose of catching rabbits, and a rabbit was caught in one of them; the prisoner afterwards came to the warren, and just as he was about to take up the rabbit, the warrener seized him: all the judges but one held that the catching was a taking within the meaning of the statute; and that to constitute this offence, it did not require such a taking as was necessary to constitute larceny (*b*). Where upon an indictment on the above section, it appeared that the prosecutor kept rabbits, which ran about loose in his rick yard, and that they had been destroyed by poison in the night-time: Patteson, J., held that it was not a case within the statute; the statute only applied to places commonly called rabbit-warrens, and not to places where a few rabbits might be kept (*c*).

(*a*) 7 & 8 G. 4, c. 29, s. 30.
(*b*) *R.* v. *Glover*, R. & Ry. 269.
(*c*) *R.* v. *Garratt et al.*, 6 Car. & P. 369.

Taking, &c. game, in the night, third offence.] If any person shall, by night, [that is, from the expiration of the first hour after sunset, until the beginning of the last hour before sunrise (*c*),] "unlawfully take or destroy any game or rabbits, in any land, whether open or inclosed;—or shall, by night, unlawfully enter or be in any land, whether open or inclosed, with any gun, net, engine, or other instrument, for the purpose of taking or destroying game:"—being summarily convicted thereof, he shall be imprisoned and kept to hard labour for three months (*d*). "And in case such person shall so offend a third time:" misdemeanor, transportation for seven years, or imprisonment and hard labour in the common gaol or house of correction for not more than two years (*e*).

The commitment may describe the offence in the same manner as in either of the forms of conviction, *ante*, vol. 1, pp. 460, 461, adding, after the words *against the form of the statute in such case made and provided, he the said A. O. having before then been twice convicted for the like offence. And you the said keeper*, &c.

And by stat. 7 & 8 Vict. c. 29, after reciting this Act of 9 G. 4, c. 69, it is enacted (by sect. 2), that all the pains, punishments and forfeitures imposed by the said Act upon persons by night unlawfully taking or destroying any game or rabbits in any land, open or inclosed, as therein set forth, shall be applicable to and imposed upon any person by night unlawfully taking or destroying any game or rabbits on any public road, highway, or path, or the sides thereof, or at the openings, outlets or gates from any such land into any such public road, highway, or path, in the like manner as upon any such land, open or inclosed; and it shall be lawful for the owner or occupier of any land adjoining either side of that part of such road, highway, or path where the offender shall be, and the gamekeeper or servant of such owner or occupier, and any person assisting such gamekeeper or servant, and for all the persons authorized by the said Act to apprehend any offender against the provisions thereof, to seize and apprehend any person offending against the said Act or this Act: and the said Act, and all the powers, provisions, authorities, and jurisdictions therein or thereby contained or given, shall be as applicable for carrying this Act into execution, as if the same had been herein specially set forth.

Game within the meaning of these Acts shall be deemed to include hares, pheasants, partridges, grouse, heath or moor game, black game, and bustards (*f*).

(*c*) 9 G. 4, c. 69, s. 12.

(*d*) Id. s. 1. See *ante*, vol. 1, p. 459.

(*e*) 9 G. 4, c. 69, s. 1.

(*f*) Id. s. 12.

Three or more, armed, taking game in the night.] If any persons, to the number of three or more together, shall by night, [that is, from the expiration of the first hour after sunset, until the beginning of the last hour before sunrise (*g*),] "unlawfully enter or be in any land, whether open or inclosed, for the purpose of taking or destroying game or rabbits, any of such persons being armed with any gun, cross-bow, fire-arms, bludgeon, or any other offensive weapon:" misdemeanor, transportation for not more than fourteen nor less than seven years, or imprisonment and hard labour for not more than three years (*h*). It must appear that the parties intended to take or destroy game in that very close, &c., in which they are proved to have been (*i*). And where two entered a preserve, and two others remained outside, but they were all of the same party, and all there for the same joint purpose, it was holden that all might be found guilty (*k*). And if there be three persons thus engaged in a joint purpose of night poaching, if any one of them be armed, they are all deemed to be armed, within the meaning of the Act (*l*). And in a recent case, reserved for the opinion of the Criminal Appeal Court, it was stated that the prisoner with two others, armed with guns, went together in the night-time for the purpose of killing game; they were seen together in close A., one of the closes mentioned in the indictment, but not in search of game, there being no game in it, but one of them was seen in the adjoining close, where there were pheasants, for the purpose of taking or killing them; the indictment stated that they were "in inclosed land occupied by Charles White," and both the closes A. and B. were in the occupation of White: the judges held that the defendants were properly convicted: Lord Campbell, C. J., said that a practice had been introduced of naming a particular close in the indictment, which was wholly unnecessary; if it state that the men were in a certain piece of land, describing it, as for instance, that it was in the occupation of any person named, it is enough; if the men were together, forming one party, for the purpose of destroying game in any part of the land, though the land comprise whiteacre, blackacre, greenacre and other fields, and though one of the men be in whiteacre, another in blackacre, and a third in greenacre, they commit one offence within the Act of parliament: Parke, B., said that if three persons be in a piece of land for the purpose of destroying game there, they are within the Act, although portions of the land be

(*g*) 9 G. 4, c. 69, s. 12.

(*h*) Id. s. 9.

(*i*) *R.* v. *Barham*, Ry. & M. 151. *R.* v. *Capwell & Pegg*, 5 Car. & P. 549. *R.* v. *Gainer*, 7 Car. & P. 231.

(*k*) *R.* v. *Lockett*, 7 Car. & P. 300. *R.* v. *Passey*, Id. 282. *R.* v. *Worker*, Ry. & M. 165.

(*l*) *R.* v. *Goodfellow et el.*, 1 Car. & K. 724.

described in the indictment as being in the occupation of different persons; the words "open or inclosed" were inserted to prevent parties from supposing that they might destroy game on waste land with impunity; and Alderson, B., added, that it was necessary to describe the land, but it might be alleged to be two closes, even though held by different occupiers, and although one close be open and the other inclosed (*m*). As to the meaning of the word "game" here, see sect. 12, *ante*, p. 182. Large stones, capable of doing serious injury, and brought to the place for the purpose by the poachers, are offensive weapons within this section (*n*).

The offender is to be tried before "the justices of gaol delivery" (*o*); and of course the court of quarter sessions have no jurisdiction of this offence.

Commitment:—*For that they the said A. B.* [&c.], *together with divers other evil disposed persons unknown, on* ——, *about the hour of eleven in the night of the same day, at* ——, *being then and there respectively armed with* [*guns*], *did then and there together, by night as aforesaid, and armed as aforesaid, unlawfully enter certain inclosed land then in the occupation of one C. D. there situate, and were then and there by night as aforesaid together unlawfully in the said land, for the purpose of then and therein taking and destroying game: against the form of the statute in such case made and provided. And you the said keeper*, &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 405.

Who may apprehend offenders.] Where any person shall be found upon any land committing any such offence as hereinbefore mentioned, it shall be lawful for the owner or occupier of such land,—or for any person having a right or reputed right of free warren or free chase thereon,—or for the lord of the manor or reputed manor wherein such land may be situate, —and also for any gamekeeper or servant of any of the persons herein mentioned, or any persons assisting such gamekeeper or servant,—to seize and apprehend such offender upon such land, or, in case of pursuit being made, in any other place to which he may have escaped therefrom, and to deliver him, as soon as may be, into the custody of a peace-officer, in order to his being conveyed before two justices of the peace (*p*).

(*m*) *R.* v. *Uezzell et al.*, 20 Law J. 192, m.

(*n*) *R.* v. *Grice et al.*, 7 Car. & P.

(*o*) 9 G. 4, c. 69, s. 9.

(*p*) Id. s. 2.

This section has reference to the offences described in the first section (*r*). But where a gamekeeper attempted to apprehend one of several persons, who were on land at night, armed under such circumstance as to bring them within the ninth section (*s*), the court held that the gamekeeper was warranted in doing so under this section, as in committing the offence within the ninth section, the offender also commits an offence within the first (*t*). It may be necessary to mention, that a person appointed as a watcher, is within the meaning of this clause (*u*). It must appear, however, that the offender had done some act "by night," so as to bring him within the meaning of the first section; otherwise the party will not be justified in apprehending him under this section (*x*).

Offenders using violence to those who apprehend them.] "And in case such offender shall assault or offer any violence with any gun, cross-bow, fire-arms, bludgeon, stick, club, or any other offensive weapon whatsoever, towards any person hereby authorized to seize and apprehend him, he shall, whether it be his first, second, or any other offence, be guilty of a misdemeanor, and being convicted thereof, shall be liable, at the discretion of the court, to be transported beyond seas for seven years, or to be imprisoned and kept to hard labour in the common gaol or house of correction for any term not exceeding two years" (*y*).

Commitment:—*For that the said A. B., before and at the time of committing the assault hereinafter mentioned, to wit, on ——, in the night of the same day, at ——, did by night as aforesaid unlawfully enter certain inclosed land of one C. D. there situate, and was then and there by night unlawfully in the said land, with a certain [gun], for the purpose of then and therein taking and destroying game, and was then and there found by one E. F., the gamekeeper of the said C. D., who had then and there lawful authority to seize and apprehend him: and that he the said A. B. [with the gun aforesaid] did then and there unlawfully assault and beat, and offer violence towards the said E. F., he the said E. F. then and there being lawfully authorized to seize and apprehend the said A. B.: against the form of the statute in such case made and provided. And you the said keeper*, &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 288.

(*r*) *Ante*, p. 182.
(*s*) *Ante*, p. 183.
(*t*) *R.* v. *Ball*, Ry. & M. 330.
(*u*) *R.* v. *Price*, 7 Car. & P. 178.
(*x*) *R.* v. *Tomlinson*, 7 Car. & P. 183.
(*y*) 9 G. 4, c. 69, s. 2.

Prosecutions, &c.] The prosecutions for offences within this Act, punishable upon indictment, must be commenced within twelve calendar months (*z*). And the prosecution is said to be commenced as soon as the party is committed to gaol upon the charge (*a*).

As to offences with respect to game, punishable on summary conviction, see *ante*, vol. 1, p. 433, &c.

GAMING.

Cheating at cards, dice, &c.] By stat. 8 & 9 Vict. c. 109, s. 17, "every person, who shall, by any fraud or unlawful device, or ill practice, in playing at or with cards, dice, tables, or other game, or in bearing a part in the stakes, wagers, or adventures, or in betting on the sides or hands of them that do play, or in wagering on the event of any game, sport, pastime, or exercise, win from any other person to himself, or any other or others, any sum of money or valuable thing, shall be deemed guilty of obtaining such money or valuable thing from such other person by a false pretence, with intent to cheat or defraud such person of the same, and, being convicted thereof, shall be punished accordingly" (*b*).

The commitment in this case must be for obtaining the money by false pretences (*c*).

GAMING-HOUSE.

A common gaming-house is a public nuisance; and the party keeping it is punishable, as for a misdemeanor at common law, with fine, or imprisonment [with hard labour (*d*)], or both (*e*). The constable or overseers of the poor of the parish in which the house is situate, may be compelled to prosecute, in the manner already mentioned (*f*) with respect to disorderly houses.

Commitment:—*On ——, at ——, unlawfully did keep and maintain a certain common gaming-house; and in the said common gaming-house, for lucre and gain, unlawfully and wilfully did cause and procure divers idle and evil-disposed persons to frequent and come to play together at a certain*

(*z*) 9 G. 4, c. 69, s. 4.

(*a*) *R.* v. *Austin*, 1 Car. & K. 621.

(*b*) 8 & 9 Vict. c. 109, s. 17.

(*c*) See *ante*, p. 154.

(*d*) 3 G. 4, c. 114.

(*e*) 1 Hawk. c. 25, s. 6. *R.* v. *Rogier*, 1 B. & C. 272.

(*f*) *Ante*, pp. 102, 103.

unlawful game of [cards] called ——, and then and there in the said common gaming-house unlawfully and wilfully did permit and suffer the said idle and evil-disposed persons to be and remain, playing and gaming at the said unlawful game called ——, for divers large and excessive sums of money. And you the said keeper, &c.

As to summary proceedings against such persons, see *ante*, vol. 1, p. 476.

GIRL.

See "Abduction," "Carnally knowing Female Children."

GLASS.

See "Larceny."

GRAIN.

See "Burning."

GRANARY.

See "Burning," "Malicious Injuries."

HIGHWAY, NOT REPAIRING.

See Vol. 1, pp. 583—595, *tit. "Highway."*

HOMICIDE.

Homicide generally, and its punishment.] Homicide is the killing of a human being, and is of four kinds:—1, murder, where the killing is from a preconceived malice, expressed or implied, entertained by the offender towards the deceased; 2, manslaughter, where the killing may or may not have been from malice, but if from malice, it was not preconceived; 3, excusable homicide, where the killing is *per infortunium*, or misadventure, or committed in self-defence; 4, justifiable homicide, when done of necessity, by an officer of justice, in the lawful execution of his duty, or by an ordinary person, to prevent the perpetration of a forcible and atrocious crime. The first two are felonies; the two latter, not. Murder is punishable with death (*a*); manslaughter, with transportation for life, or for not less than seven years, or imprisonment with or without hard labour in the common gaol or house of correction for not more than four years, or with such fine as the court shall award (*b*); but justifiable and excusable homicide are not punishable at all, nor are any forfeitures attached to them (*c*). Formerly the killing of a master by his servant, or of a husband by his wife, under such circumstances as would constitute the crime of murder in ordinary cases, was deemed an offence of a graver nature, termed petty treason; but it is now deemed murder only, and treated in every respect, and punishable, as such (*d*).

The death and the cause of it.] The death may be caused either by poison, or by violence, such as shooting, cutting, stabbing, beating, drowning, strangling, suffocating, &c.; or if a parent, or person *in loco parentis*, cause the death of the child, or a master cause the death of his apprentice, by beat-

(*a*) 9 G. 4, c. 31, s. 3.
(*b*) Id. s. 9.
(*c*) 9 G. 4, c. 31, s. 10.
(*d*) Id. s. 2.

ing, ill using, or wilfully overworking it (*e*), or by depriving it of sufficient nourishment (*f*), or by other cruelty or ill treatment (*g*), it will be homicide; but a married woman cannot be charged with the death of a child, by not providing it with proper food, unless it be proved that her husband furnished her with the means of providing the food (*h*). Where a man was indicted for the murder of an aged woman, whom he had undertaken for certain considerations to support, and who had died in his house for want of necessary food and nourishment, Patteson, J., told the jury that if they thought the prisoner had been guilty of neglect, so gross and wilful as to satisfy them that he must have contemplated the death of the woman, in that case they should find him guilty of murder; but if they thought that he was only careless, and that although the death was occasioned by his negligence, he did not contemplate it, they should find him guilty of manslaughter (*i*). So, causing the death of a child, by giving it spirits in a quantity unfit for it, has been holden homicide (*k*). Where a woman, being delivered of a child, left it in an orchard, covered only with a few leaves, and a kite struck it and killed it, this was holden to be homicide in the mother (*l*). So, where a woman was delivered of a child on the high road, and after carrying it some way, she left the child, naked and exposed, on the road side, where it died: this was holden by Coltman, J., to be homicide in the mother; but inasmuch as she left it at the side of a road much frequented, and where people were passing at the time, he held it to be manslaughter only, not murder; and he took this distinction: if a woman leave her child, a young infant, at a gentleman's door, or other place where it is likely to be found and taken care of, and the child die, it will be manslaughter only: but if the child be left in a remote place, where it is not likely to be found, as, for instance, on a barren heath, and death ensue, it will be murder (*m*). So, where a son carried his sick father, from one town to another, in a frosty morning, against his will, by reason whereof he died, this was homicide in the son (*n*). And if a man make use of a living but irresponsible agent to effect the death of another, as if a man persuade an idiot to kill another, and he do it, the man, not the idiot, is guilty of the homicide (*o*). Where a woman was indicted for the murder

(*e*) *R.* v. *Cheeseman*, 7 Car. & P. 454.

(*f*) *R.* v. *Squires*, 1 Russ. 16, 426.

(*g*) *R.* v. *Self*, 1 East, P. C. 226.

(*h*) *R.* v. *Squires*, *supra*. *R.* v. *Saunders*, 7 Car. & P. 277.

(*i*) *R.* v. *Marriott*, 8 Car. & P. 425. See *R.* v. *Plummer*, 1 Car. & K. 600.

(*k*) *R.* v. *Martin*, 3 Car. & P. 211.

(*l*) 1 Hawk. c. 31, s. 6.

(*m*) *R.* v. *Walters*, Car. & M. 164.

(*n*) 1 Hale, 431, 432.

(*o*) 1 Hawk. c. 31, s. 7.

of her child, and it appeared that she gave a bottle of laudanum to the woman who had care of her child, with directions to give it a teaspoonful every night; the woman in fact did not give it to the child, but having placed the bottle on the mantel piece, another child found it there, and administered part of the contents to the prisoner's child, who soon after died: the judges held that the administering of the poison by the other child, was, in point of law, under the circumstances of the case, as much an administering of it by the prisoner, as if the prisoner had actually administered it with her own hand (*p*). So, if a man having a wild or unruly beast, which he knows would hurt persons, and he purposely let it loose, either with a design that it may injure some person, or even to frighten people and make sport, and it kill a man, the man who so let it loose will be guilty of the homicide (*q*). Nor does the law require that the homicide should be committed against the will of the party killed; for if a man kill another with his consent, or by his desire, he is as much guilty of homicide as if he had killed him against his will (*r*).

But an infant in the womb, though alive, cannot be the subject of homicide. Even where a child was partly brought forth at the time the injury was inflicted which caused its death, it was holden not to be homicide (*s*); there must be an independent circulation in the child, otherwise it cannot be considered in being for this purpose (*t*). And where it appeared, from the evidence of the surgeon, that the child must have died, before it was fully born, so as to have an independent circulation, Gurney, B., on the authority of the above case of R. *v.* Enoch, held that it could not be the subject of murder (*u*); but the prisoner, who was the mother of the child, was convicted of concealing its birth (*y*). Killing a child, however, after it has wholly come forth from the body of the mother, but whilst it is still connected with her by means of the umbilical cord, may be murder (*z*). Also the party must die within a year and a day from the time the injury was inflicted, otherwise the law presumes that the injury was not the cause of the death, and the death cannot be deemed homicide (*a*). It has been holden also that a man cannot be convicted of homicide in procuring another to be

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(*p*) *R.* v. *Catherine Michael*, 9 Car. & P. 356.

(*q*) 1 Hale, 431.

(*r*) *R.* v. *Sawyer*, 1 Russ. 424, and see *R.* v. *Dyson*, R. & Ry. 523.

(*s*) *R.* v. *Poulton*, 5 Car. & P. 329. *R.* v. *Brain*, 6 Id. 349. *R.* v. *Sellis*, 7 Id. 850.

(*t*) *R.* v. *Enoch*, 5 Car. & P. 539.

(*u*) *R.* v. *Wright*, 9 Car. & P. 754.

(*y*) Id.

(*z*) *R.* v. *Reeves*, 9 Car. & P. 25. *R.* v. *Trilloe*, Car. & M. 650.

(*a*) 1 Hawk. c. 317, s. 9.

executed, by charging him falsely with a crime of which he knew him to be innocent (*b*).

The act which inflicted the injury must be proved to have been done by the party accused; and the injury must be proved to have caused the death, which, in cases of any doubt, is usually proved by a surgeon or other medical man. But it will be no excuse for him who has inflicted a wound, that the party wounded might have recovered if he had taken care of himself (*c*), or if the wound had not been improperly treated; or that he was in such a state of disease at the time, that, independently of the wound, &c., he must shortly have died, if the wound in fact hastened his death (*d*).

Formerly both the death, and cause of the death, must have happened within the realm, to render the homicide punishable here by the common law. But now, by stat. 9 G. 4, c. 31, s. 8, "where any person being feloniously stricken, poisoned, or otherwise hurt upon the sea, or at any place out of England, shall die of such stroke or poisoning or hurt in England, or being feloniously stricken, poisoned or hurt at any place in England, shall die of such stroke, poisoning, or hurt upon the sea, or at any place out of England: the offence, and that of the accessories before or after the fact, may be dealt with, inquired of, tried, determined, and punished in the county or place in England, where the death, stroke, poisoning or hurt shall happen." And by sect. 7, if any British subject "shall be charged in England with any murder or manslaughter, or with being accessory before the fact to any murder, or after the fact to any murder or manslaughter, the same being respectively committed on land out of the United Kingdom, whether within the king's dominions or without, it shall be lawful for any justice of the peace of the county or place where the person so charged shall be, to take cognizance of the offence so charged, and to proceed therein as if the same had been committed within the limits of his ordinary jurisdiction;" and the party shall then be tried under a commission to be issued for that purpose.

In proceeding before a magistrate, to get a party charged with homicide committed, it is necessary that the death should be expressly proved; for otherwise non constat that any offence has been committed. And in like manner at the trial, upon an indictment for murder or manslaughter, the death must be expressly proved; it cannot be inferred from circumstances. And therefore where a girl was indicted for the

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(*b*) *R.* v. *Macdaniel*, 1 East, P. C. 333.

(*c*) 1 Hawk. c. 31, s. 10.

(*d*) 1 Hale, 428. *R.* v. *Martin*, 5 Car. & P. 128. *R.* v. *Webb*, 1 Mo. & R. 405. and see *R.* v. *Cheeseman*, 7 Car. & P. 454.

murder of her illegitimate child, and it was proved that she took it from the nurse on the 7th April, with the expressed intention of taking it to her father's at L., that on the 8th at six in the evening she was seen with a child, and that between eight and nine she arrived at her father's without it, and the child was never afterwards seen: it was holden that she could not be convicted of the murder (*e*).

By whom committed.] This is proved, either by some person who actually saw the offence committed, or by the dying declarations of the deceased, or by the confession of the offender, or by circumstantial evidence, that is, by the proof of facts from which it may fairly be implied. As to dying declarations, in what cases evidence and the effect of them, see *ante*, p. 137.

Whether committed from malice prepense or not.] Malice prepense, or a preconceived malice, is an essential ingredient in the crime of murder; and if that be proved either expressly or impliedly, and it appear that it was the motive for committing the homicide, the offence is murder: no circumstance can extenuate it to manslaughter (*f*). In all other cases, homicide, which is not justifiable or excusable, is manslaughter.

An express preconceived malice is proved from the previous threats or declarations of the offender against the deceased, or acts from which a malicious feeling may be implied. A preconceived malice may be implied, where a man does an act, which he knows must, or most probably will, be the occasion of another's death, without any apparent or assignable motive for his doing it; even where there is merely proof of the killing, and no proof whatever on either side of the circumstances under which it was committed, the law in that case implies malice prepense from the mere fact of the homicide, and the homicide thus unexplained will be deemed murder (*g*). Also knowingly administering poison to another and thereby killing him, is deemed so strongly indicative of malice prepense, that it is sufficient to prove that, at the time he administered it, he knew it to be poison, and that the quantity was sufficient to kill, without further proof (*h*).

But it is not necessary that the malice should have been preconceived against the person afterwards killed: if A., from malice prepense against B., by mistake kill C., or shoot at B. and kill C., or lay poison for B. and it is taken by C., who dies of it, it is as much murder, as if he had killed B., or enter-

(*e*) *R.* v. *Hopkins*, 8 Car. & P. 591.

(*f*) Fost. 277. 1 Hawk. c. 31, s. 26; see *R.* v. *Mason*, 1 East, P. C.

(*g*) Fost. 255. 1 Hawk. c. 31, s. 32.

(*h*) See 1 Hale, 455. 1 Hawk. c. 31, s. 20.

tained the malice against C. (*i*). Or if the homicide were committed under such circumstances, that if he had killed B., it would only have been manslaughter, the killing of C. by mistake for him will also only be manslaughter (*k*). So, although he entertains no malice towards any individual, yet if he wilfully do an act which he knows must or probably will cause the death of some person, whom he knows not, and a man be thereby killed, he will be guilty of murder, in the same manner, as if he had a preconceived malice against the individual killed. As if a man, being on a horse which he knows to be used to kick, ride him amongst a crowd of persons, and the horse kick a man and kill him, the rider is guilty of murder, although he had no malice against any particular person, nor any other intention than that of diverting himself by frightening the persons around him (*l*). And the same where a person fires a loaded pistol among an assembly of persons, or in the public streets where many persons are passing, and thereby kills a man, or the like (*m*).

As the duty of a justice of the peace, with respect to homicide, is (in practice at least) merely ministerial, namely, taking the ordinary proceedings for the apprehension and committal of the accused party, it will not be necessary here to enter into any minute detail of the law upon the subject: if the distinction be plainly pointed out between felonious homicide, and that which is excusable or justifiable, so as to enable the magistrate to judge correctly whether the accused should be committed or discharged, little more than a general view of the other parts of the subject is necessary in a work of this description. Still as the doctrine of implied malice is one of great importance, and of very general application to most cases of homicide, and as justices of the peace should be somewhat conversant with it, in order to determine rightly whether they should refuse or take bail for a party accused, I shall endeavour to illustrate it further under the following heads:—

Homicide upon provocation.] No provocation will justify a man in killing another; nor will it excuse him. Killing upon provocation, therefore, must be murder or manslaughter. If a man kill another without any provocation, or upon a slight one, it is murder (*n*). If upon serious provocation, a man beat another with his fists, or with a stick or the like, not likely to kill, with intent merely to chastise him, and he kill him, this will be manslaughter only (*o*); or if they both immediately fight with swords, and the offending party be killed,

(*i*) 1 Hawk. c. 31, s. 7.
(*k*) *R.* v. *Snow*, 1 Leach, 151.
(*l*) 1 Hawk. c. 31, s. 68.
(*m*) See *R.* v. *Bailey*, R. & Ry. 1.
(*n*) 1 Hawk. c. 31, s. 32
(*o*) Id. s. 34.

it will be manslaughter only (*p*); but if he kill him with a deadly weapon, the other being unarmed, or before the other has an opportunity to defend himself, it will be murder (*q*). Or if he revenge himself in a cruel manner, wholly disproportioned to the provocation, and death ensue, it will be murder (*r*). But a husband suddenly killing a man whom he finds in adultery with his wife, has been holden to be manslaughter only (*s*). In all these cases however, if a sufficient time pass after the provocation, and before the wound or other cause of death, for passion to subside and reason to resume its seat, there the offence will be murder (*t*).

Homicide upon an arrest.] If a sheriff's officer be killed, whilst attempting to execute civil process, it is murder (*u*), even although the writ or warrant be erroneous (*x*); but if he attempt to arrest a wrong person (*y*), or the right person in an unlawful manner, as by breaking open an outer door, or at an unlawful time, as on a Sunday (*z*), killing him will be manslaughter only. If a constable or any person acting in his aid be killed in endeavouring to execute a magistrate's warrant, if the warrant be legal, and the slayer had notice, either expressly, or from circumstances, of the deceased being a constable, and of the intent of the arrest (*a*), the law in that case implies malice, and the slayer will be guilty of murder (*b*). And the same, as to killing any other person to whom a warrant is directed. But if the warrant be bad on the face of it, as being too general (*c*), or the like, the killing in such a case will be manslaughter only. So, if a constable or other person, without warrant, apprehend, or attempt to apprehend an offender, in a case where by law he may do so, and be killed in so doing, it will be murder (*d*); but if it happen in a case where he has no authority by law to apprehend the party, the killing will be manslaughter only (*e*). So, if a gamekeeper or his assistant be killed in attempting to apprehend a poacher,

(*p*) 1 Hawk. c. 31, s. 34.

(*q*) Id. s. 33. Fost. 295. *R.* v. *Lynch*, 5 Car. & P. 324.

(*r*) 1 Hawk. c. 31, s. 42. *R.* v. *Willoughby*, 1 East, P. C. 288. See *R.* v. *Sherwood*, 1 Car. & K. 556.

(*s*) Fost. 296. 1 Hawk. c. 31, s. 36.

(*t*) 1 Hawk. c. 31, s. 40. Fost. 296. Arch. New Cr. Law, 233. *R.* v. *Hayward*, 6 Car. & P. 157.

(*u*) 1 Hawk. c. 31, s. 61. Fost. 270. *R.* v. *Baker*, 1 East, P. C. 323.

(*x*) 1 Hawk. c. 31, s. 62.

(*y*) 1 Hawk c. 31, s. 64.

(*z*) Id. s. 65.

(*a*) *R.* *Gordon*, 1 East, P. C. 315. *R.* *Payne*, Ry. & M. 378.

(*b*) 1 Hale, 457.

(*c*) *R.* v. *Hood*, Ry. & M. 281.

(*d*) *R.* v. *Ford*, R. & R. 329. *R.* v. *Woolmer & Palmer*, Ry. & M. 334. *R.* v. *Hems*, 7 Car. & P. 312.

(*e*) *R.* v. *Wm. Thompson*, Ry. & M. 80. *R.* v. *Curvan*, Ry. & M. 132. *R.* v. *Curran*, 3 Car. & P. 397. *R.* v. *Davis*, 7 Id. 785. *R.* v. *Phelps et al.*, Car. & M. 180.

if the arrest would have been lawful, the offence is murder (*f*); but if the arrest would have been unlawful, the offence would be manslaughter only (*g*). See upon this subject generally, *Arch. New Cr. Law*, 236.

So, if a gamekeeper or other person, lawfully authorized to apprehend poachers in the night (*h*), be killed in attempting to do so,—if the arrest would have been lawful, the killing is murder; if unlawful, manslaughter only (*i*).

On the other hand, if an officer, or other person, in endeavouring to make a legal arrest, be resisted, and in opposing force to force happen to kill the party, the homicide is justifiable (*k*); and the officer, &c. in such a case need not retreat, as in the ordinary cases of *se defendendo* (*l*); but if the arrest would have been illegal, the killing would amount to manslaughter (*m*). So, where a party may lawfully be arrested for felony, and he knowing the cause, flies, so that he cannot be taken otherwise than by killing him, the constable pursuing him will be justified in killing him; or a private person will in like manner be justified, if he can prove that the deceased was actually guilty of the felony (*n*); but where the arrest is for a misdemeanor only, or in a civil action, even a constable will not be justified in killing in pursuit; if in such a case he kill with a deadly weapon, it will be murder, if otherwise, manslaughter (*o*).

Homicide by fighting.] If two persons deliberately fight a duel and one of them be killed, the survivor and the seconds are guilty of murder (*p*). So, if in a prize-fight, or if any two men quarrel and agree to fight on the next day, or at such a distance of time that the blood may be presumed to have cooled in the intermediate time, and they fight accordingly, and one is killed: the other and the seconds, and indeed all present aiding and abetting, are in strictness guilty of murder; but inasmuch as such combats are not with deadly weapons, and there is therefore no indication of a previous intent to kill, the offenders are usually convicted of manslaughter only, unless the death have been caused by some unfairness in the fight (*q*).

(*f*) *R.* v. *Warner, Albone, Butler & Chasham*, Ry. & M. 380. *R.* v. *Edwards et al.*, 3 Car. & P. 390. *R.* v. *Whithorne et al.*, Id. 394. *R.* v. *Ball*, Ry. & M. 330. *R.* v. *James Ball*, Id. 333.

(*g*) *R.* v. *Addis*, 6 Car. & P. 388.

(*h*) See 9 G. 4, c. 69, s. 1.

(*i*) Arch. New Cr. Law, 245.

(*k*) 1 Hale, 494, 481. Fost. 318, 274.

(*l*) 2 Hale, 218.

(*m*) See Fost. 318.

(*n*) 2 Hale, 118, 119.

(*o*) 2 Hale, 217. Fost. 271. And see *R.* v. *Longden*, R. & Ry. 228. *R.* v. *Smith*, 1 Russ. 459. Arch. New Cr. Law, 222.

(*p*) 1 Hawk. c. 31, s. 31. Fost. 297. *R.* v. *Cuddy*, 1 Car. & K. 210.

(*q*) See Arch. New Cr. Law, 236.

But if two persons, upon a sudden quarrel, fight, and one kill the other, it is manslaughter only (*r*), no matter which of them struck the first blow (*s*). So, if they adjourned to a field and there fought, or if each went to fetch a weapon, and again met within such time that the blood could not be presumed to have cooled, and fought, the killing would be manslaughter only (*t*). And where two men, on a sudden quarrel, fought with their fists, and one knocked the other down, and stamped with his foot upon his stomach and belly with great force, two or three times, and killed him, this was holden to be manslaughter only (*u*). But if there were a predetermination to fight, and the sudden quarrel affected merely for the purpose of evading the law, the killing would be murder (*v*). And the same, if there were previous malice on the part of the slayer, no matter how sudden the quarrel and fight (*x*), unless it could be proved that the parties had been reconciled, and that the fight arose from a fresh quarrel (*y*). So, if the party killing have taken any unfair advantage of the other, this may be evidence of malice prepense, and the offence be murder: as if two quarrel, and one draw his sword, and before the other can get his sword ready, he stab and kill him, this would be murder (*z*). So, if two persons fight, and one knock the other down, put a rope round his neck and strangle him, this is murder (*a*). So, where two persons on a sudden quarrel, fight with fists, at first upon equal terms, but in the course of the fight one of them snatch up or take out of his pocket a knife or other deadly weapon and kill his adversary, if this be done *bonâ fide* of necessity for the purpose of defending himself, the killing will be manslaughter only (*b*); but if it be done for the purpose of having an unfair advantage in the conflict, it will be murder (*c*). See upon this subject *Arch. New Cr. Law*, 229.

If a man come up whilst two others are fighting upon a private quarrel, whether sudden or malicious, and take part with one and kill the other, this will be manslaughter only (*d*); unless he used some unfair advantage, such as striking with a deadly weapon, whilst the other was unarmed, or the like (*e*), or unless the party killed were an officer, at the time in the lawful exercise of his duty (*f*), in which cases the offence would be murder.

(*r*) 3 Inst. 55.
(*s*) See *R.* v. *Lewis*, 1 Car. & K. 419.
(*t*) 1 Hawk. c. 31, s. 29.
(*u*) *R.* v. *Pierre Ayes*, R. & Ry. 166.
(*v*) 1 Hawk. c. 31, ss. 25, 24.
(*x*) Id. s. 26.
(*y*) Id. s. 30.
(*z*) Id. s. 27.
(*a*) *R.* v. *Shaw*, 6 Car. & P. 372.
(*b*) *R.* v. *Kessal*, 1 Car. & P. 437, per Park, J. *R.* v. *Snow*, 1 Leach, 151. *R.* v. *Anderson*, 1 Russ. 447; and see *R.* v. *Rankin et al.*, R. & Ry. 43.
(*c*) *R.* v. *Kessal*, *supra*.
(*d*) 1 Hawk. c. 31, ss. 35, 56.
(*e*) See *R.* v. *Langden*, R. & Ry. 228.
(*f*) 1 Hawk. c. 31, s. 57; and see s. 60.

And all struggles in anger, whether by fighting, wrestling or otherwise, are unlawful; and if death ensue, it will be manslaughter at least (*g*).

Homicide in self-defence.] If a man be engaged in a sudden affray, and before he has inflicted a mortal wound he retreat to the wall, or as far as he can go with safety, and then kill his assailant as the only possible means of preserving his own life, the homicide is excusable (*h*). And the same, although he do not retreat, if he cannot do so without manifestly endangering his life (*i*). Also an officer, in the execution of his duty, is not bound to retreat (*k*); nor is any other person, when feloniously attacked upon the highway (*l*), or where by force or surprise a felony is attempted to be committed against his person, habitation or property (*m*), but he may repel force by force, and if in the conflict he happen to kill the offender, the homicide is justifiable (*n*). And on the other hand, he who attacks another, with malice prepense, and afterwards retreats, and kills the party in his own defence, shall not be excused, but the homicide will amount to murder (*o*). And this rule of law as to homicide *se defendendo,* extends to the case of master and servant, husband and wife, parent and child, killing in defence of each other respectively (*p*).

Homicide by correction.] If a parent in correcting his child, a schoolmaster his scholar, a master his apprentice, &c., cause the death of the child, &c., it is murder or manslaughter or excusable homicide, according to the circumstances under which it is committed. If he have wilfully used an instrument likely to kill, or continued the punishment longer than it was probable the child could bear, the killing would probably be deemed murder (*q*); if with an instrument likely to kill, but with intention not of killing, but merely of frightening the deceased, it will be manslaughter (*r*); but if the correction be moderate, both with respect to the instrument and the continuance of the punishment, it will be homicide by misadventure merely, and excusable (*s*).

But where a person takes upon himself to correct, where by law he has no right, and death ensues, it will be manslaughter

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(*g*) *R.* v. *Canniff,* 9 Car. & P. 359.

(*h*) 1 Hawk. c. 29, s. 13. Fost. 276, 278. 1 Hale, 481, 483.

(*i*) 1 Hawk. c. 29, s. 14.

(*k*) Id. s. 16.

(*l*) Id. s. 16.

(*m*) Fost. 273. Arch. New Cr. Law, 225.

(*n*) Id.

(*o*) 1 Hawk. c. 31, s. 26; c. 29, s. 18. Fost. 277.

(*p*) 1 Russ. 545.

(*q*) 1 Hale, 473. Fost. 262. *R* v. *Wiggs,* 1 Leach, 379.

(*r*) *R.* v. *Conner,* 7 Car. & P. 438.

(*s*) 1 Hale, 473; and see *Anon.,* 1 East, P. C. 261. Fost. 262. Arch. New Cr. Law, 218.

at the least: as where a pickpocket was thrown into a pond for the purpose of ducking him, merely by way of punishment, and he was drowned, this was holden to be manslaughter (*t*).

Homicide by negligence or ignorance.] If a man take upon himself an office or duty, requiring skill or care, if by his ignorance, carelessness or negligence he cause the death of another, he will be guilty of manslaughter: as if a person by careless or furious driving unintentionally run over another, and kill him, it will be manslaughter (*u*); or if the person in command of a steam boat, by negligence or carelessness unintentionally run down a boat, &c. and the person in it is thereby drowned, he is guilty of manslaughter (*v*). Drunkenness, however, is no excuse whatever for homicide (*x*). But if the death happen without any negligence or carelessness, &c. on the part of the person unintentionally causing it, it will be homicide by misadventure only and excusable.

In like manner, if any person, whether a medical man or not, profess to deal with the life or health of another, he is bound to use competent skill and sufficient attention; and if he cause the death of the other through a gross want of either, he will be guilty of manslaughter (*y*).

Homicide without intention, in doing another act.] If homicide be intentionally committed, in the prosecution of another offence, it is murder; whether the other offence be a felony or misdemeanor (*z*). But if homicide be unintentionally committed, whilst the offender is committing or endeavouring to commit another offence, if such other offence be a felony, the homicide is murder (*a*); if a misdemeanor, it is manslaughter. Where a sheriff's officer was in possession of goods under an execution, and the owner and others gave him an excessive quantity of spirits to make him drunk, and then put him into a hackney carriage, with orders that he should be driven about the streets, and after being so driven about two hours he was found to be dead: the parties being indicted for manslaughter, Parke, B., told the jury that if they were satisfied that the parties made the deceased drunk for the

(*t*) *R.* v. *Fray*, 1 East, P. C. 236.

(*u*) *R.* v. *Walker*, 1 Car. & P. 320. *R.* v. *Mastin*, 6 Car. & P. 396. *R.* v. *Grout*, Id. 629. *R.* v. *Timmins*, 7 Id. 499. *R.* v. *Swindall et al.*, 2 Car. & K. 230.

(*v*) *R.* v. *Green*, 7 Car. & P. 156, and see *R.* v. *Allen*, Id. 153.

(*x*) *R.* v. *Carroll*, 7 Car. & P. 145, and see *R.* v. *Meakin*, Id. 297.

(*y*) *R.* v. *Spiller*, 5 Car. & P. 333. *R.* v. *Van Butchell*, 3 Id. 629. *R.* v. *Williamson*, Id. 635. *R.* v. *St. John Long*, 4 Id. 398, 423. *R.* v. *Webb*, 1 Moody & R. 405.

(*z*) 1 Hawk. c. 31, ss. 51, 52.

(*a*) Id. ss. 44, 45; see *R.* v. *Pitts*, Car. & M. 284.

unlawful purpose of preventing the completion of the execution, or, he being drunk, put him into the carriage for the like purpose, they should find them guilty (*b*). If however, the offence intended be homicide, such as would be deemed manslaughter only, as if two persons upon a sudden quarrel fight, and one of them unintentionally kill a third person who is endeavouring to part them, this will be manslaughter only (*c*), unless the person killed be a justice of the peace or constable, in which case the killing would be murder (*d*). On the other hand, if in doing an innocent act, with reasonable care and skill, in a proper manner and with due caution, it unfortunately cause the death of a third person,—as if a person be poisoned by ratsbane laid to destroy vermin,—this is homicide *per infortunium* only, and excusable (*e*), and the party is not liable to any punishment (*f*).

Principals and accessories.] If two persons be present, each aiding and abetting the other either in the commission of a homicide, or in the commission of some other offence, in the prosecution of which a homicide is committed, both generally are equally guilty,—the one who kills, is principal in the first degree, and the other as principal in the second (*g*). In the case of a duel from which death ensues, the seconds,—as well the second of the party killed as the second of the party killing,—are guilty of murder, as principals in the second degree (*h*). Even in the case of a prize-fight, if death ensue, not only the seconds, but those who were present looking on, are guilty of manslaughter (*i*). So, if a man encourage another to kill himself, and be present at the time he does so, he will be principal in the murder (*k*). Where a man and woman, who cohabited together, being in extreme poverty, agreed to commit suicide, and they together took a quantity of laudanum, of which the woman died, but the man recovered; the man was holden guilty of the murder of the woman and convicted (*l*). But if men, after being engaged in concert in attempting a joint offence, separate, and one of them commit homicide, not in pursuance of the joint intent, but in attempting to effect his escape or some other collateral act, he alone is guilty, the other is not (*m*). So where A. and B. were riding

(*b*) *R.* v. *Packard et al.*, Car. & M. 236.

(*c*) 1 Hawk. c. 31, s. 47.

(*d*) Id. s. 48.

(*e*) Id. s. 46. Id. c. 29, s. 1. Fost. 258. Arch. New Cr. Law, 216—221. See *R.* v. *Martyn*, 3 Car. & P. 211.

(*f*) 9 G. 4, c. 31, s. 10.

(*g*) See *R.* v. *Warner et al.*, Ry. & M. 380. *R.* v. *Edmeads*, 3 Car. & P. 390. *R.* v. *Whitehorn*, Id. 394. *R.* v. *Murphy*, 6 Id. 103. See *R.* v. *Swindall et al.*, 2 Car. & K. 230.

(*h*) 1 Hawk. c. 31, s. 31. *R.* v. *Young*, 8 Car. & P. 644.

(*i*) Arch. New Cr. Law, 249.

(*k*) *R.* v. *Dyson*, R. & Ry. 523.

(*l*) *R.* v. *Alison*, 9 Car. & P. 418.

(*m*) *R.* v. *White and Richardson*, R. & Ry. 99.

violently along a road, and seemingly racing, and A. rode past the horse of C. without doing any damage, but B. in following him rode against C. who was thereby thrown and killed: this was holden to be manslaughter in B. only, not in A. (*n*). There may be cases, however, in which the degree of guilt of principals may be different, and one be guilty of murder, the other of manslaughter only: as if A. from malice prepense attack B., and whilst they are fighting C. comes up, takes part with A., and is killed,—this will be murder in A., but manslaughter only in C. (*o*), unless B. were a magistrate or constable in the execution of his duty, in which case it would be murder in both (*p*). So if A. with malice prepense meet and suddenly fight with B., and A.'s servants, being present, but not knowing of the malice, take part with their master, and B. be killed,—this will be murder in A., manslaughter only in his servants (*q*), unless B. were a magistrate or constable as above mentioned (*r*). So if A. wantonly whip a horse on which B. is riding, so that he run over C. and kill him,—this may be manslaughter in A., but homicide *per infortunium* only in B. (*s*).

As to accessories.] There can be no accessories before the fact in manslaughter (*t*); but there may in murder; and there may be accessories after the fact in both (*u*). Accessories before the fact to murder, are punishable with death (*x*); and accessories after the fact, with transportation for life, or imprisonment with or without hard labour for not more than four years (*y*). Accessories after the fact in manslaughter, are punishable with imprisonment, with or without hard labour, for not more than two years (*z*).

Commitments for Murder or Manslaughter.

Murder.] *On ——, at ——, feloniously, wilfully and of his malice aforethought, did kill and murder one C. D. And you the said keeper*, &c.

See the form of an indictment for murder, and the evidence necessary to support it, *Arch. New Cr. Law*, 206.

Manslaughter.] *On ——, at ——, feloniously did kill and slay one C. D. And you the said keeper*, &c.

See the form of an indictment for manslaughter, *Arch. New Cr. Law*, 254.

(*n*) *R.* v. *Mastin*, 6 Car. & P. 396.
(*o*) 1 Hawk. c. 31, ss. 35, 56.
(*p*) Id. s. 57.
(*q*) Id. s. 55.
(*r*) Id. s. 57.
(*s*) 1 Hawk. c. 29, s. 3.
(*t*) 1 Hawk. c. 30, s. 2.
(*u*) 3 Inst. 55.
(*x*) 9 G. 4, c. 31, s. 3.
(*y*) Id.
(*z*) Id. s. 31. Arch. New Cr. Law, 253, 254.

HOPBINDS.

See "Malicious Injuries."

HORSE.

See "Cattle."

HORSE SLAUGHTERING.

See upon this subject generally, ante, Vol. 2, p. 1.

Putting the hide into lime.] If any person, keeping or using any such slaughtering-house, shall throw into any lime-pit, or otherwise immerse in lime, or any preparation thereof, or rub therewith, or with any other corrosive matter, or destroy or bury, the hide or skin of any horse, &c. by him slaughtered or flayed, or shall be guilty of any offence against this Act for which no punishment or penalty is expressly provided or declared : misdemeanor, fine and imprisonment, and such corporal punishment, by public or private whipping, as the court shall direct (*a*).

In what cases persons bringing horses, &c., may be committed.] In case any person, who shall offer to sale or shall bring any horse, &c., to any person keeping such slaughtering-house to be slaughtered, or being dead, to be flayed or skinned, shall not be able, or shall refuse to give a satisfactory account of himself, or of the means by which the same came into his possession; or if there shall be any reason to suspect that such horse, &c., is stolen, or otherwise unlawfully obtained: the person keeping such slaughtering-house, and his servants, &c., and also the said inspector or his servants, may seize and detain

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(*a*) 26 G. 3, c. 71, s. 9.

such person, and every such horse, &c., so brought or offered to sale as aforesaid, and deliver such person into the custody of a constable or other peace-officer, who shall immediately convey such person before a justice of the peace for the county, &c., where the offence shall be committed; and if such justice shall, upon examination and inquiry, have cause to suspect that such horse, &c., is stolen or unlawfully obtained, such justice may commit such person into safe custody, for any time not exceeding the space of six days, in order to be further examined; and if upon either of the said examinations, such justice shall be satisfied or have reason to believe that such horse, &c., is stolen, or illegally obtained, the said justice is hereby authorized and required to commit the person, so bringing or offering the same for sale, to the common gaol or house of correction of the county, &c., wherein the offence shall be committed, there to be dealt with according to law (*z*).

HOUSEBREAKING.

See "Burglary."

HOUSEBREAKING IMPLEMENTS, HAVING.

See "Burglary."

HUSBAND AND WIFE.

Their liability for crime.] If the husband be present at the time his wife commits a felony (except murder and robbery), the law presumes that the wife acts under the coercion of her husband, excuses her, and punishes the husband only (*a*). But if she commit it in his absence, even although it be proved that he incited her to it, she is as amenable to punishment as if she were a feme sole (*b*). So, if a wife commit treason, murder, or robbery, even in the company of her husband, the law,

(*z*) 26 G. 3, c. 71, s. 7.
(*a*) 1 Hawk. c. 1, s. 2.
(*b*) 1 Hale, 45. Staundf. 26.

on account of the odiousness and dangerous consequences of these crimes, will not excuse her (*c*). So, if a wife commit an offence under felony, even in company of her husband, she is liable to punishment, as if she were not married (*d*). She may alone be convicted of a penalty (*e*); but the penalty cannot be levied by distress upon the goods of the husband (*f*). So, she and her husband, or she alone, may be indicted for keeping a disorderly house (*g*), or gaming-house (*h*), or for forcible entry (*i*), riot, conspiracy, &c. But a wife cannot be charged with having conspired with her husband alone; for conspiracy must be between two persons at least, and husband and wife are but one person in law (*k*). Nor is she deemed accessory after the fact, in receiving her husband, although she may know at the time of his having committed a felony; for she is in his power, and is obliged to receive him (*l*). And the same, where she receives from him goods which she knows he has stolen (*m*).

A woman, also, can never be deemed guilty of stealing the goods of her husband (*n*), or of her husband and others (*o*), unless she steal them from some third person with intent to make such person chargeable for them (*p*); for as the husband and wife are one person in law, the wife's possession is deemed the possession of the husband. Even where a wife, living separate from her husband, set fire to his house, out of malice towards him, the judges held that she ought not to be convicted (*q*). But where a wife, and a man with whom she afterwards cohabited, jointly took money and goods belonging to the husband, the judges held that an indictment for larceny would lie against the man, though not against the wife (*r*). So, where the goods of the husband were delivered by the wife to the man with whom she was about to elope, and with whom she then eloped and afterwards lived in adultery: Coleridge, J., held the man to be guilty of larceny (*s*).

Their competency as witnesses.] In all cases where one of them is incompetent from interest, the other is so also (*t*).

(*c*) 1 Hawk. c. 1, s. 9. 1 Hale, 47.

(*d*) 1 Hawk. c. 1, s. 13; but see *R.* v. *Price*, 8 Car. & P. 19, *semb. cont.*

(*e*) *R.* v. *Crofts*, 2 Str. 1120.

(*f*) *Foster's case*, 11 Co. 61 b.

(*g*) 1 Hawk. c. 1, s. 12.

(*h*) *R.* v. *Dixon and Wife*, 10 Mod. 335.

(*i*) Dalt. 126.

(*k*) 1 Hawk. c. 72, s. 8.

(*l*) 1 Hale, 47.

(*m*) *R.* v. *Brooks*, 22 Law J. 121, m.

(*n*) 1 Hale, 514. 1 Hawk. c. 33, s. 19.

(*o*) *R.* v. *Willis*, Ry. & M. 375.

(*p*) *R.* v. *Bramley*, R. & Ry. 478.

(*q*) *R.* v. *Eliza Marsh*, Ry. & M. 182.

(*r*) *R.* v. *Tolfree*, Ry. & M. 243.

(*s*) *R.* v. *Tollett et al.*, Car. & M. 112. *R.* v. *Featherstone*, 23 Law J. 127, m.

(*t*) See 12 East, 250. *R.* v. *Williams*, 9 B. & C. 549.

Nor can a wife be examined as a witness for or against her husband, when charged with a criminal offence, or a husband be examined for or against his wife (*u*), except in the case of a personal injury committed by one upon the other, in which case (from necessity) the one may be a witness against the other (*x*). A wife also may exhibit articles of the peace against her husband (*y*), or a husband against his wife.

INDECENCY.

Public indecency.] Where a person exposed himself naked upon a balcony, in Covent Garden, it was holden to be an indictable offence, and he was fined 2,000 marks for it by the court of King's Bench (*a*). So, where a man, who was a passenger in an omnibus, indecently exposed his person in the presence and sight of three women who were also passengers: this was holden to be a public indecency, and indictable (*b*). So, where a man stripped himself naked on the sea beach, for the purpose of bathing, but so near to some inhabited houses, that he could be distinctly seen from them, it was holden to be a misdemeanor, and the party was indicted and convicted (*c*). To amount to an indictable offence the exposure must be in the sight of more than one person (*d*).

And by stat. 5 G. 4, c. 83, s. 4, "every person wilfully, openly, lewdly, and obscenely exposing his person in any street, road, or public highway, or in the view thereof, or in any place of public resort, with intent to insult any female," shall be deemed a rogue and vagabond; and upon summary conviction, shall be committed to the house of correction, there to be kept to hard labour for any time not exceeding three calendar months. See *ante*, vol. 2, tit. "*Vagrant.*"

Indecent books, or prints, &c.] Printing or publishing indecent or obscene books, prints, or pictures, is a misdemeanor, at common law, and punishable with fine or imprisonment, or both (*e*). So, procuring and obtaining them with intent to

(*u*) Gilb. Ev. 133, 134. Bac. Abr. Evidence, A. 1.

(*x*) *R.* v. *Azyre*, 1 Str. 633. See *ante*, p. 148.

(*y*) *R.* v. *Doherty*, 13 East, 171.

(*a*) *R.* v. *Sir Charles Sedley*, Sid. 168.

(*b*) *R.* v. *Holmes*, 22 Law J. 122, m.

(*c*) *R.* v. *Crunden*, 2 Camp. 89.

(*d*) *R.* v. *Webb*, 18 Law J. 39, m.

(*e*) *R.* v. *Curl*, 2 Str. 788. *R.* v. *Wilkes*, 4 Burr. 2527, 2574.

publish them, is also indictable and punishable in the same manner (*g*). But merely having them in his possession is not (*h*).

As to the summary proceeding against persons exposing to view obscene prints, see *ante*, vol. 2, p. 692.

And as to indecent assaults, see *ante*, p. 37.

INDICTMENT.

An indictment is an accusation at the suit of the crown found to be true by the oaths of a grand jury (*a*). We shall notice the law relating to it shortly, under three heads: the commencement, the body of the indictment, and the conclu-

The Commencement.

The following is the form of the commencement of an indictment:—

Berkshire to wit:—The jurors for our Lady the Queen, upon their oath present, that [*J. S.*, &c., stating the facts constituting the offence]. The venue laid must be descriptive of the district over which the court has jurisdiction (*b*).

Body of the Indictment.

Description of the defendant.] The person charged by the indictment must be described by his christian or first name, and his surname; it is no longer necessary to state his addition of place or of degree or mystery. If he have a name of dignity he should be called by it (*c*). Whether this description be a correct one or not, is immaterial; for by stat. 7 G. 4, c. 64, s. 19, if any objection be made on that ground, " the court

(*g*) *Dugdale* v. *R.* in error, 22 Law J. 50, m.
(*h*) Id.
(*a*) 2 Hawk. c. 25.
(*b*) See Arch. New Cr. Law, 63. *R.* v. *Mitchell et al.*, 11 Law J. 55, m.; 2 Q. B. 636, and see *post*, tit. " *Venue.*"
(*c*) See *R.* v. *Gregory*, 15 Law J. 38, m.

shall forthwith cause the indictment to be amended, and shall call upon the party to plead thereto" (*b*). But in prosecutions against a parish or township for the non-repair of a highway, or against a county for the non-repair of a bridge, the indictment may be against the inhabitants of the parish, township, or county generally, without naming any of them (*c*).

Description of the indictor or party injured.] The indictor or party injured, if known, must be described by his christian or first name, and surname; or, if a corporation, by their name of incorporation. But if the party be described by the name by which he is usually known, it will be sufficient (*d*). It is not necessary to give him any addition (*e*). If on the other hand the party be unknown, he should be described as "a person to the jurors aforesaid unknown" (*f*); but if at the trial afterwards it appear that the party is known, the variance will be fatal, and the defendant must be acquitted (*g*).

Where the indictors or parties injured are partners, joint-tenants, parceners or tenants in common, it will be sufficient to name one, and to state the property, &c., to belong to him and "another" or "others;" and they may be described thus wherever it is necessary to mention them (*h*). Materials for making or repairing county bridges, gaols, or other buildings may be stated to belong to the inhabitants of the county generally (*i*). Goods provided for the poor of a parish or township, may be described as the goods of the overseers for the time being (*k*); or goods provided by the guardians of a union, &c., may be described as the goods of "*The guardians of the poor of the —— union* [or *of the parish of* ——], *in the county of* ——" (*l*). Tools and materials for repairing highways, may be described as belonging to the surveyor, without naming him (*m*); or tools or materials for turnpike roads, or the buildings, gates, &c., may be described to belong to the trustees or commissioners, without naming them (*n*). So property belonging to the commissioners of sewers, may be described as belonging to such commissioners, without naming them (*o*). In what cases the indictment may be amended in this respect, see *ante*, tit. "*Amendment*," p. 21.

(*b*) See also 14 & 15 Vict. c. 100, s. 24.

(*c*) 2 Hawk. c. 25, s. 68.

(*d*) See *R.* v. *Berriman*, 5 Car. & P. 601. *R.* v. ——, 6 Id. 408. *R.* v. *Williams*, 7 Id. 298. *R.* v. *Norton*, R. & Ry. 510. See *R.* v. *Waters*, 7 Car. & P. 250.

(*e*) 2 Hale, 182.

(*f*) See *R.* v. *Mary Smith*, 6 Car. & P. 151. *R.* v. *Campbell*, Car. & K. 82.

(*g*) *R.* v. *Robinson*, per Richards, C. B., 1 Holt, 595. *R.* v. *Walker*, 3 Camp. 264.

(*h*) 7 G. 4, c. 64, s. 1[illegible] See *R.* v. *Steel*, Car. & M. 337.

(*i*) 7 G. 4, c. 64, s. 15.

(*k*) Id. s. 16.

(*l*) 5 & 6 W. 4, c. 69, s. 7.

(*m*) 7 G. 4, c. 64, s. 16.

(*n*) Id. s. 17.

(*o*) Id. s. 18.

The facts, &c., constituting the offence.] Every offence must of course consist of certain facts and circumstances: in the case of an offence at common law, these facts, &c., are defined by the rule of the common law upon the subject: in offences against statutes, by the statute creating the offence. And all the material facts and circumstances thus comprised in the definition of the offence, must be stated; if any one be omitted, the indictment will be bad. And all this must be stated with certainty, and the charge laid by way of positive allegation, otherwise the indictment will be bad (*p*). It is not necessary to state the time at which each fact happened, unless time be of the essence of the offence (*q*); nor the place, unless it be matter of local description (*r*). The intent with which the offence was committed, must be stated, if that form a material part of the offence (*s*).

Technical words.] There are certain technical terms necessary in some indictments; such as "ravish" in an indictment for rape; "murder" and "of his malice aforethought" in an indictment for murder; "burglariously" in an indictment for burglary; and "feloniously" in all indictments for felony; otherwise, if omitted, such indictments will be bad. So, in indictments upon statutes, where the definition of the offence contained in them, includes such adverbs as "unlawfully," "wilfully," "maliciously," &c., the offence must be charged to have been committed "unlawfully," "wilfully," "maliciously," &c., accordingly; otherwise the indictments will be bad (*t*).

The Conclusion.

The conclusion of an indictment at common law is "*against the peace of our Lady the Queen, her crown and dignity;*" or if the offence have been committed in a former reign,—"*against the peace of our late Lord King William the Fourth, his crown and dignity.*" The conclusion of indictments against statutes, is, "*against the form of the statute* [or *statutes*] *in such case made and provided, and against the peace,*" &c., as above (*u*). No indictment, however, shall be deemed insufficient, for want of a proper or formal conclusion (*x*).

(*p*) See Arch. New Cr. Law, 87. *R.* v. *Rowed*, 11 Law J. 74, m. *R.* v. *Cox*, Car. & K. 494.

(*q*) 14 & 15 Vict. c. 100, s. 24.

(*r*) Id. s. 23.

(*s*) See Arch. New Cr. Law, 87.

(*t*) See Arch. New Cr. Law, 91.

(*u*) See *R.* v. *Williams*, 14 Law J. 164, m. *R.* v. *Adams et al.*, Car. & M. 299.

(*x*) 14 & 15 Vict. c. 100, s. 24.

It may be necessary to mention that the court of quarter sessions may quash an indictment before plea pleaded (*x*). So, may a judge at the assizes, or the court of Queen's Bench.

Joinder of Counts.

Two distinct offences cannot be joined in the same count of an indictment. But you may have several counts for the same offence, stating it in different ways. You may have a count for larceny and a count for receiving the same goods, against the same person (*y*). So, in other cases you may include in the same indictment several counts for distinct felonies or misdemeanors; but in the case of felonies, the judge, at the trial, may put the prosecutor to his election as to which count he will proceed, and confine him to that (*z*).

As to the amendment of an indictment, see *ante*, p. 21.

INFANT.

Liability for crime.] An infant, according to the legal acceptation of the term, is a person under twenty-one years of age. At and above the age of fourteen, an infant may be convicted of any offence, excepting those which consist of a nonfeazance merely, such as the not apprehending persons committing felonies, or the like (*a*). Under seven years of age, he cannot be convicted of felony (*b*); and under fourteen he cannot be convicted for rape (*c*), or of carnally knowing a girl under the age of ten, or between the age of ten and twelve; although he have arrived at the age of puberty, and be capable of committing the offence (*d*). But although he cannot be convicted of the rape, he may be convicted of an indecent assault, if the evidence warrant it (*e*). Between the ages of seven and fourteen, however, although presumed by law not to be *doli capax*, yet that presumption may be rebutted by circumstances, showing clearly that the infant was, at the time of committing the offence, capable of discerning between good and evil; and in such case he is as much amenable for offences

(*x*) *R.* v. *Wilson et al.*, 14 Law J. 3, m.

(*y*) 11 & 12 Vict. c. 46, s. 3.

(*z*) Arch. New Cr. Law, 95.

(*a*) 1 Hale, 20, 21, 22, 25; 3 Bac. Abr. 581, 591.

(*b*) 1 Hale, 27, 28.

(*c*) 1 Hale, 630.

(*d*) *R.* v. *Jordan*, 9 Car. & P. 366.

(*e*) Arch. New Cr. Law, 3.

(excepting rape, and offences of that description, and also offences of omission, as above mentioned), as if he were of full age (*f*).

Competency as a witness.] Infants of the age of fourteen, may be witnesses; and under that age, if they appear to have competent discretion (*g*), and know the obligation of an oath (*h*).

JURORS.

1. *Common Jurors.*

Qualification.] Every man between the ages of twenty-one and sixty, residing in any county in England, who shall have in his own name or in trust for him, within the same county, 10*l.* by the year above reprises in lands or tenements, whether of freehold, copyhold or customary tenure, or of ancient demesne, or in rents issuing out of any such lands or tenements, or in such lands, tenements and rents taken together, in fee-simple, fee-tail, or for the life of himself or some other person;—or who shall have within the same county 20*l.* above reprises in lands or tenements, held by lease for an absolute term of twenty-one years or more, or for any term of years determinable on any life or lives;—or who being a householder shall be rated or assessed to the poor-rate, in Middlesex, on a value not less than 30*l.*, or in any other county on a value not less than 20*l.*;—or who shall occupy a house containing not less than fifteen windows:—shall be

(*f*) 1 Hale, 25, 26, 27. *York's case*, Fost. 70. Arch. New Cr. Law, 3.

(*g*) 2 Hale, 278.

(*h*) See *R.* v. *Rachel Williams*, 7 Car. & P. 320. See *ante*, p. 146.

qualified and liable to serve on grand juries in courts of sessions of the peace, and on petty juries for the trial of all issues joined in such courts of sessions of the peace, and triable in the county, riding, or division in which every man so qualified respectively shall reside (*a*). In Wales, the qualification is three-fifths of the qualifications above mentioned (*b*).

In all corporations within the late municipal corporation Act, to which a separate quarter sessions is or shall be granted, every burgess is qualified and liable to serve on grand juries in such borough, and also upon juries for the trial of all issues joined in any court of quarter sessions of the peace, triable within the borough of which such person shall be a burgess (*c*).

If persons serve on a jury, who are not qualified, it is only matter of challenge, and must be objected to, if at all, by way of challenge (*d*).

Exemptions.] Peers are exempt from serving on juries; so are the Judges of the Courts of Record at Westminster; Clergymen in holy orders; Priests of the Roman Catholic faith, who have taken and subscribed the oaths and declarations required by law; persons who teach or preach in a congregation of Protestant Dissenters, whose place of meeting is registered, and who follow no secular occupation, except that of schoolmaster, producing a certificate of some justice of the peace of their having taken the oaths and subscribed the declaration required by law; Serjeants and Barristers at Law actually practising; Members of the Society of Doctors at Law, and advocates of the Civil Law actually practising; Attornies, Solicitors, and Proctors actually practising, and having duly taken out their annual certificates; Officers of the Courts of Law and Equity, and of the Ecclesiastical and Admiralty Courts; Coroners, Gaolers, and Keepers of Houses of Correction; Members and Licentiates of the Royal College of Physicians in London, actually practising; Surgeons, being Members of the Royal College of Surgeons, in London, Dublin, or Edinburgh, and actually practising; Apothecaries, certificated by the Apothecaries' Company, and actually practising; Officers of the Navy or Army on full pay; Pilots licensed by the Trinity House of Deptford, Hull, or Newcastle-upon-Tyne, and Masters in the Buoy or Light Service of these Corporations; and Pilots licensed by the Lord Warden of the Cinque Ports, or by statute or charter in any other port; Household Servants of Her Majesty; Officers of Customs or Excise; Sheriff's Officers; High Constables, and Parish Clerks (*e*).

(*a*) 6 G. 4, c. 50, s. 1.

(*b*) Id.

(*c*) 5 & 6 W. 4. c. 76, s. 121.

(*d*) Semb. See *R.* v. *Sutton et al.*, 8 B. & C. 417. *R.* v. *Sullivan et al.*, 8 Ad. & El. 831.

(*e*) 6 G. 4, c. 50, s. 2; and see 5 & 6 W. 4, c. 76, s. 121.

The inhabitants of the City and Liberty of Westminster, also, are exempt from serving on juries at the sessions of the peace for the county of Middlesex (*f*).

Aliens are not qualified to be jurors, except upon juries *de medietate linguæ* (*g*); but this is mere matter of challenge (*h*). Also, persons attainted of treason or felony, or convicted of any crime which is infamous, unless they have obtained a free pardon, or persons under outlawry or excommunication, shall not be qualified to serve on juries (*i*).

No justice of peace shall be summoned or impanelled as a juror, to serve at the sessions of the peace for the jurisdiction of which he is a justice (*k*).

Besides the exemptions above mentioned, every member of the council of any borough, every justice assigned to keep the peace therein, and the treasurer and town-clerk thereof, shall be exempt and disqualified from serving on any jury within the borough, and shall be exempt from serving on any other jury within the county in which such borough is situate; and all burgesses of a borough, for which a separate court of quarter sessions shall be holden, shall be exempt from serving on juries for the trial of issues at the sessions of the county (*l*).

Formerly, Quakers and Moravians could not serve on juries, for they could not be sworn (*m*); but as they now may make an affirmation instead of an oath, in all cases (*n*), they may be jurors in both civil and criminal cases. So may members of the sect called Separatists (*o*). See the form of an affirmation, *post*, tit. "*Oaths.*"

Jury de medietate linguæ.] On the prayer of every alien, indicted or impeached of any felony or misdemeanor, the sheriff or other proper minister shall, by command of the court, return for one-half of the jury a competent number of aliens, if so many be in the town or place where the trial is had, and if not, then so many aliens as shall be found in the same town or place, if any; and no such alien juror shall be challenged for want of freehold or other qualification, although they may for any other cause (*p*).

Jury lists.] In the first week in July in every year, the clerk of the peace in every county shall issue his warrant to the high constables, commanding them to issue their precepts to the churchwardens and overseers of the poor of the several parishes, and to the overseers of the poor of the several townships, within their respective constablewicks, requiring them

(*f*) 6 G. 4, c. 50, s. 49.
(*g*) 6 G. 4, c. 50, s. 3.
(*h*) *R.* v. *Sutton et al.*, 8 B. & C. 417.
(*i*) 6 G. 4, c. 50, s. 3.
(*k*) Id. s. 48.
(*l*) 5 & 6 W. 4, c. 76, s. 22.
(*m*) See *R.* v. *Chennens*, Ry. & M. 374.
(*n*) 3 & 4 W. 4, c. 49.
(*o*) Id. c. 82.
(*p*) 6 G. 4, c. 50, s. 47.

to return a list of all men residing within their parishes, &c., qualified and liable to serve on juries (*q*). The high constables make out their precepts accordingly (*r*); and the church-wardens and overseers make out the lists (*s*), and fix a copy on the church door on the three first Sundays in September (*t*). And the justices of the peace of any division in England or Wales, at a special petty sessions to be holden for that purpose before the first day of July in any year, may make an order for annexing any extra-parochial place, whenever they shall think it expedient, to any parish or township adjoining thereto, for the purposes of this Act, and a copy of such order shall, within five days from the making thereof, be served upon the churchwardens and overseers of such adjoining parish, or upon the overseers of such adjoining township, and such churchwardens and overseers, or overseers, shall make out, according to this Act, a true list of all men qualified and liable to serve on juries as aforesaid, residing as well in their own respective parish or township as in the extra-parochial place thereto annexed, and shall act within such extra-parochial place, for the purposes of this Act, as in their own respective parish or township (*u*).

Lists, how reviewed, &c., at petty sessions.] The justices of the peace, in every division in England and Wales, shall hold a special petty sessions for the purposes herein mentioned, within the last seven days of September in every year, on some day and at some place, of which notice shall be given by their clerk, before the twentieth day of August next preceding, to the high constable and to the churchwardens and overseers of every parish, and to the overseers of every township, within such division; and the churchwardens and overseers of each parish, and the overseers of each township, shall then and there produce the list of men qualified and liable to serve on juries as aforesaid within their respective parishes or townships, by them prepared and made out, as hereinbefore directed, and shall answer upon oath such questions touching the same as shall be put to them, or any of them, by the justices then present; and if any man, not qualified and liable to serve on juries as aforesaid, is inserted in any such list, it shall be lawful for the said justices, upon satisfaction from the oath of the party complaining, or other proof, or upon their own knowledge, that he is not qualified and liable to serve on juries, to strike his name out of such list, and also to strike thereout the names of men disabled by lunacy or imbecility of

(*q*) 6 G. 4, c. 50, s. 4.
(*r*) Id. s. 6.
(*s*) Id. s. 8.
(*t*) Id. s. 9.
(*u*) 6 G. 4, c. 50, s. 7. The forms of the warrant, precept, and lists, are given in the schedule to the Act.

mind, or by deafness, blindness, or other permanent infirmity of body, from serving on juries; and it shall also be lawful for such justices to insert in such list the name of any man omitted therein, and likewise to reform any errors or omissions which shall appear to them to have been committed in respect to the name, place of abode, title, quality, calling, business, or the nature of the qualification of any man included in any such list: provided always, that no man's name, if omitted, shall be inserted in such list, nor shall any error or omission in the description of any man in such list be reformed by the said justices, unless upon the application of such men respectively, or unless such men respectively shall have had notice that an application for such purpose would be made to the justices at such petty sessions, or unless the said justices at such sessions, or any two of them, shall cause notice to be given to such men respectively, requiring them to show cause, at some adjournment of such petty sessions to be holden within four days thereafter, why their names should not be inserted in such list, or why any error or omission in the description of such men in such list should not be reformed; and when every such list shall be duly corrected at such sessions, or at such adjournment thereof, it shall be allowed by the justices present, or two of them, at such sessions or such adjournment, who shall sign the same, with their allowance thereof; and the high constable shall receive every list so allowed, and deliver the same to the court of quarter sessions next holden for the county, riding, or division, on the first day of its sitting, at the same time attesting on oath his receipt of every such list from the petty sessions, and that no alteration hath been made therein since his receipt thereof (*x*).

The lists are then copied into "the jurors' book" by the clerk of the peace, and the book delivered by him to the sheriff, to be used from the first of January then next, for one year (*y*).

Penalty for neglect of duty by high constables.] If any high constable shall for fourteen days after the warrant of the clerk of the peace shall be served on him, or left at his usual place of abode, refuse or neglect to issue and deliver his precept, as hereinbefore directed, to the churchwardens and overseers of any parish, or to the overseers of any township within his constablewick;—or shall in like manner refuse or neglect to issue and deliver his precept to the churchwardens and overseers of any parish, or to the overseers of any township, where such parish or township extends into any other hundred, lathe, wapentake, or other like district besides his own, either in the

(*x*) 6 G. 4, c. 50, s. 10. (*y*) Id. s. 12.

same or a different county (provided the principal church of such parish or township shall be situate within his own hundred, lathe, wapentake, or other like district);—or shall refuse or neglect in any of the foregoing cases to annex to the respective precepts such a number of the forms of return as he shall *bonâ fide* deem sufficient, or to deliver such additional number as may be demanded of him by any churchwarden or overseer as aforesaid, (provided he has such additional number in his possession,) or in case of his not so having them shall refuse or neglect to apply forthwith to the clerk of the peace for such additional number, and to deliver the same to the party so demanding, within three days after his receipt thereof; —or shall on due notice refuse or neglect to attend at any such petty sessions, or such adjournment thereof as aforesaid, or to receive any list or lists there tendered by the justices present, or to deliver the same to the quarter sessions next holden for the county, riding, or division, at the time and in the manner hereinbefore directed, or shall make any alteration in any such list after his receipt thereof:—every such high constable, offending in any of the foregoing cases, shall for every such offence forfeit a sum not exceeding ten pounds, nor less than forty shillings (*z*).

Penalty for neglect of duty by churchwardens or overseers.] If any churchwarden or overseer of any parish, or any overseer of any township, shall refuse or neglect (unless prevented by sickness) to assist in making out any list required by this Act, so that the same shall not be made out at the time and in the manner hereinbefore directed;—or shall wilfully omit out of such list any man whose name ought to be inserted therein, or shall wilfully insert therein the name of any man who ought to be omitted,—or shall take any money or other reward for omitting or inserting any man whatsoever, —or shall wilfully insert therein a wrong description of the name, place of abode, title, quality, calling, business, or the nature of the qualification of any man;—or shall refuse or neglect, in case the number of forms of return delivered by the high constable shall be insufficient, to apply to the high constable for a sufficient number, so that the list may be made out at the time and in the manner hereinbefore directed;—or shall refuse or neglect to fix a copy of such list duly signed, or to subjoin thereto such notice as herein required, on the principal door of any church, chapel, or other public place of religious worship within their respective parishes or townships, on any of the Sundays on which the same ought to be so fixed;—or shall refuse to allow any inhabitant of their re-

(*z*) 6 G. 4, c. 50, s. 44.

spective parishes or townships to inspect such list, or a true copy thereof, gratis, at any reasonable time during the three weeks herein mentioned;—or shall, on due notice, refuse or neglect to produce such list at such petty sessions as aforesaid, or to answer on oath such questions touching the same as shall there be put, or to attend at such petty sessions, or any such adjournment thereof as aforesaid;—or shall refuse to allow the said petty sessions, or any justice of the peace, upon due request, to inspect or make any extracts from the poor-rate of any parish or township within their respective divisions, for the purpose hereinbefore mentioned, such rate being in the custody of the party so refusing:—penalty not exceeding ten pounds nor less than forty shillings; and the justice before whom such offender shall be convicted of any such offence of wrongful insertion or omission, shall forthwith, in writing under his hand, certify the same to the clerk of the peace of the county, riding, or division in which the man or men so wrongfully omitted or inserted shall reside, and the said clerk of the peace shall cause the list in which such wrongful insertion or omission shall have occurred, to be corrected according to such certificate, and shall also give notice thereof to the sheriff or under sheriff, who shall correct the jurors' book accordingly (*a*).

Penalty for neglect of duty by clerks of the peace and sheriffs.] If any clerk of the peace shall refuse or neglect to cause a sufficient number, either of warrants, precepts, or forms of return, to be printed in the manner hereinbefore directed, or shall refuse or neglect to issue and deliver to any high constable within the meaning of this Act, the warrant and precepts as herein directed, or to annex to the same such a number of the forms of return as he shall *bonâ fide* deem sufficient, or to deliver to any high constable such additional number thereof as he may apply for, within three days after such application;—or shall refuse or neglect to provide or prepare a jurors' book within the time or in the manner and form herein prescribed, or to deliver the same to the sheriff or under-sheriff of the county within the time herein prescribed, or to give notice to the sheriff or under-sheriff of any wrongful insertion or omission, certified to him by any justice of the peace as aforesaid, or to deliver to any man who shall have been summoned and have duly attended or served as a grand juror, or petty juror, at the sessions of the peace, a certificate of such man's service, on his application and payment, or to transmit to the sheriff or under-sheriff a list of the men who shall have been so summoned, and have so attended or served,

(*a*) 6 G. 4, c. 50, s. 45.

within the time and in the manner herein directed;—or if any clerk of any such petty sessions, to be holden as aforesaid, shall refuse or neglect to give due notice thereof to any high constable, or to the churchwardens and overseers of any parish, or to the overseers of any township within such division;—or if any sheriff or under-sheriff of a county shall make or cause to be made any alteration whatsoever in the list of jurors contained in the jurors' book, except in consequence of the conviction of the churchwarden or overseer hereinbefore provided for;—or if any sheriff or under-sheriff of a county, or any sheriff or secondary of London, shall neglect or refuse to provide or prepare a list of special jurors in the manner and within the time herein prescribed, or shall wilfully write or cause to be written therein the name of any person not qualified, or shall wilfully omit thereout the name of any person duly qualified as a special juror, or shall neglect or refuse to write or cause to be written the several numbers contained in such list upon distinct pieces of parchment or card, in the manner and within the time herein prescribed, or shall subtract or destroy, or by any fault or neglect lose, any of the said pieces of parchment or card, or shall neglect or refuse, upon discovery of such loss, to supply the same within five days;—or if any sheriff or under-sheriff of a county shall refuse or neglect to prepare, or keep for inspection, a copy of the panel in the cases herein provided for, or to register the service of any juror as hereinbefore directed, or to deliver to any man who shall have been summoned, and have duly attended or served as a juror at any court of assize, nisi prius, oyer and terminer, or gaol delivery, or in any of the said courts of the three counties palatine or great sessions, a certificate of such man's service, on his application and payment as aforesaid;—or shall refuse or neglect, within ten days after the next succeeding sheriff shall be sworn into or have entered upon office, to deliver over to him, as well all the jurors' books and lists that shall be made or prepared in the year of his sheriffalty, as also all such other like books and lists as were prepared in the sheriffalty of any of his predecessors, within four days then next preceding, and which were delivered over to him by any of his predecessors:—penalty fifty pounds, one moiety whereof shall be to the use of his Majesty, his heirs or successors, and the other moiety, with full costs, to such person as shall sue for the same in any of his Majesty's courts of record at Westminster, by action of debt (*b*).

Jurors, how returned, summoned, &c.] Before each sessions, a precept issues to the sheriff, requiring him to return a com-

(*b*) 6 G. 4, c. 50, s. 46.

petent number of jurors (*d*); and the sheriff shall thereupon return the names of men contained in the jurors' book, and no others (*e*). The precept directs him to return twenty-four, but he usually returns forty-eight (*f*). The jurors shall be summoned ten days at least before the day on which they are required to attend (*g*). As to the summoning of them within a liberty or franchise, see *R.* v. *John Joram*, 4 B. & C. 692. It was formerly doubted whether jurors could be compelled to attend at an adjourned quarter sessions: but it is now declared and enacted that they shall attend (*h*).

If any person serve on a jury, upon a trial for felony or misdemeanor, who was not returned as a juror by the sheriff, &c., it shall not be a cause for reversing or staying the judgment (*i*).

By 6 G. 4, c. 50, s. 20, however, it is provided, that the courts of sessions of the peace, &c. shall have and exercise the same power and authority, as they have heretofore had and exercised, in issuing any writ or precept, or in making any award or order orally or otherwise, for the return of a jury for the trial of any issue before such courts, or for amending or enlarging the panel of jurors; and the return thereto shall be made in the manner heretofore used, except that the jurors shall be returned from the body of the county, and not from any particular hundred, &c., and that they shall be qualified according to this Act. This seems to recognize the right of a court of quarter sessions, to order the sheriff to return a jury immediately, as well in misdemeanors as felonies, which seems formerly to have been doubted (*k*).

The clerk of the peace shall make out a list of the grand and petty jurors who attend, and transmit the same to the under-sheriff, who shall thereupon register the names in the jurors' book; and the clerk of the peace shall give each juror, upon application, a certificate of his attendance (*l*). And no man shall be summoned to serve upon grand or petty juries at sessions, who shall have served as a juror at such sessions, within one year in Wales, or in the counties of Hereford, Cambridge, Huntingdon, or Rutland, or within two years in any other county, and has such certificate as aforesaid (*m*).

The like in boroughs.] In boroughs within the late Municipal Corporation Act, 5 & 6 W. 4, c. 76, to which separate quarter sessions have been or shall be given, seven days at the least before the holding of every quarter sessions, the clerk of

(*d*) 6 G. 4, c. 50, s. 13.
(*e*) Id. s. 14.
(*f*) 2 Hale, 263.
(*g*) 6 G. 4, c. 50, s. 25.
(*h*) 1 & 2 Vict. c. 4.
(*i*) 7 G. 4, c. 64, s. 21.
(*k*) See 2 Hawk. c. 4, ss. 1, 4. 2 Hale, 261, 262.
(*l*) 6 G. 4, c. 50, s. 41.
(*m*) Id. s. 42.

the peace shall cause to be summoned a sufficient number of persons, being qualified and liable as before mentioned (*n*), to serve as grand jurors at every such sessions; and shall also cause to be summoned not less than thirty-six nor more than sixty persons so qualified and liable to serve as jurors, at every such sessions (*o*). The clerk of the peace shall make out a list of the grand jurors, and a panel of the petty jurors, containing their names, places of abode, and descriptions (*p*).

Recovery of penalties.] The offender may be convicted before any one justice of the peace (*q*).

The conviction shall be drawn up in the following form, or in any form to the same effect (*r*) :—

Be it remembered, that on ——, *in the year of our Lord* ——, *at* ——, *A. B. is convicted before me C. D., one of Her Majesty's justices of the peace for the* —— *of* ——, *for that he the said A. B. did* [specifying the offence, and the time and place where the same was committed, as the case shall be]; *and the said A. B. is for his said offence adjudged by me the said justice to forfeit and pay the sum of* ——. *Given under my hand and seal the day and year first above mentioned.*

Which conviction shall not be quashed for want of form, or be removable by certiorari (*s*).

Such penalty, unless forthwith paid, shall be levied by distress and sale of the offender's goods and chattels, by warrant under the hand and seal of such justice; who may mitigate the penalty, if he shall see fit, to the extent of one moiety thereof; and all penalties, the application whereof is not hereinbefore particularly directed, shall be paid to the complainant; and for want of sufficient distress, the offender shall be committed by warrant under the hand and seal of such justice, to the common gaol or house of correction, for such term, not exceeding six calendar months, as such justice shall think proper, unless such penalty be sooner paid (*t*).

2. *Grand Jurors.*

The qualification of grand jurors at quarter sessions, is the same as that required for persons serving on petty juries (*u*). And the same in boroughs within the Municipal Corporation

(*n*) *Ante*, p. 209.
(*o*) 5 & 6 W. 4, c. 76, s. 121; and see 1 Vict. c. 78, s. 36.
(*p*) 5 & 6 W. 4, c. 76, s. 121.
(*q*) 6 G. 4, c. 50, s. 55.
(*r*) 6 G. 4, c. 50, s. 56.
(*s*) Id. s. 57.
(*t*) Id. s. 55.
(*u*) See 6 G. 4, c. 50, s. 1.

Act (*u*). As to their oath, see *Arch. Sess. Pr.* 240. The number must be at least twelve (*x*), and must not exceed twenty-three (*y*).

If the grand jury, at the assizes or sessions, ignore a bill of indictment, a second bill for the same offence against the same party cannot legally be preferred to them at the same assizes or sessions; or if it be, they ought not to ignore it, but the proper way is not to notice it (*z*).

JUSTICES' ORDER, DISOBEYING.

In all cases where the justices at sessions, or a justice or justices out of sessions, have by law authority to make an order, requiring any person to do an act, such as to pay costs (*a*), to pay a church-rate (*b*), to re-admit a person as member of a benefit society (*c*), or such as the order of maintenance of a bastard child formerly (*d*), or the like: if the party upon whom such order is made, refuse or neglect to obey it when required, and after a copy of the order or other notice of it, shall have been served upon him (*e*), he will be guilty of a misdemeanor at common law, and liable upon indictment to be punished by fine, or imprisonment, or both.

Commitment:—*On ——, at ——, did unlawfully and contemptuously neglect and refuse to obey a certain order of J. P. and L. M. esqrs., two of Her Majesty's justices of the peace in and for the county of ——, requiring him the said A. B. to ——* [here set out shortly the substance of the order], *and of which said order the said A. B. had before had notice. And you the said keeper*, &c.

JUVENILE OFFENDERS, LARCENY BY.

See ante, Vol. 2, tit. "Juvenile Offenders."

(*u*) See 5 & 6 W. 4, c. 76, s. 121, *ante*, p. 210.
(*x*) See 2 Hale, 161.
(*y*) 2 Burr. 1088. *R.* v. *Marsh*, 6 Ad. & El. 236.
(*z*) *R.* v. *Humphreys*, Car. & M. 601, per Patteson, J.
(*a*) *R.* v. *Byce*, 1 Bott, 324.
(*b*) *R.* v. *Bidwell*, 17 Law 99, m.
(*c*) *R.* v. *Gilkes*, 3 Car. & P. 52; 8 B. & C. 439. *R.* v. *Wade*, 1 B. & Ad. 861. *R.* v. *Gash*, 1 Stark. 441.
(*d*) See *Kirk* v. *Stickwood*, 4 B. & Ad. 421.
(*e*) See *R.* v. *Moorhouse*, Cald. 554. *R.* v. *Kingston*, 8 East, 41.

LARCENY.

1. *Larceny of Goods and Chattels.*

What, and the usual evidence of it.] Larceny is a felonious taking and carrying away of the personal goods of another. Where goods are stolen, and are very shortly afterwards found in the possession of a person who is unable satisfactorily to show by evidence in what manner he came by them, the presumption is that he is the person who stole them. It is therefore a very usual way of proving a larceny, first to call the prosecutor or other person, in whose possession the goods were at the time they were stolen, to prove when he last saw them in his possession, and when he missed them; then to call some person who can prove that they were in the possession of the prisoner very shortly after they were stolen; and lastly, to call some person to identify and prove the property in the goods. This is deemed good *primâ facie* evidence of the larceny, and has the effect of throwing the onus upon the prisoner of proving that he honestly came by them. The presumption also may be very much strengthened by proof of any circumstances of suspicion in the conduct of the defendant, with relation to the goods in question: such as his selling them at an under value, his pawning them, or getting some other person to pawn them for him, in a feigned name; his

denying their being or having been in his possession; his being near the place where, and about the time, they were stolen, or the like. And Alderson, B., in a recent case (*a*), laid it down as a general principle, that where a man, in whose possession stolen property is found, gives a reasonable account as to how he came by it, as by telling the name of the person from whom he received it, and who is known to be a real person, it is incumbent on the prosecutor to show that such account is false; but if the account given be unreasonable or improbable on the face of it, the onus of proving its truth lies upon the person in whose possession the property is found. But where the prisoner was met coming out of a warehouse, in which pepper in bulk was stored, with a quantity of pepper of the same quality in his possession, and on being stopped he threw down the pepper, and said "I hope you will not be hard with me;" the quantity of pepper in the warehouse was so great, it was impossible to prove that any portion had been taken from the bulk: but the Court of Criminal Appeal held, that without any such direct proof of loss, there was abundant evidence to warrant the conviction of the prisoner (*b*). The possession of the goods by the prisoner, however, must be proved to have been very recent after the felony committed. Where the goods were found in the prisoner's possession sixteen months after they were stolen, this was holden to be no evidence that he stole them (*c*). And in another case, where the property stolen was found in the prisoner's possession three months after they were stolen, Park, J., ordered the prisoner to be acquitted, without putting him upon his defence (*d*). But where cloth was stolen in an unfinished state, and was found in the possession of the prisoner three months afterwards in the same state, Patteson, J., held that under these circumstances the possession was sufficiently recent to raise the presumption of the prisoner's guilt (*e*). There may be cases in which, from circumstances, it may appear doubtful whether the possession of the goods by the prisoner does not prove rather that he received them from another who stole them, than that he stole them himself. However, the circumstances must amount to strong proof of the receiving, to be sufficient to rebut the presumption of the prisoner's being the person who stole the goods. Where goods stolen were shortly afterwards found concealed in an old engine-house, and the place being watched, the prisoners were observed to go there and take them away; the prisoners being indicted as

(*a*) *R.* v. *Crowhurst*, 1 Car. & K. 370.

(*b*) *R.* v. *Burton*, 23 Law J. 52, m.

(*c*) *Anon.*, 2 Car. & P. 459.

(*d*) *R.* v. *Adams*, 3 Car. & P. 600.

(*e*) *R.* v. *Partridge*, 7 Car. & P. 551.

receivers, there being no evidence of the goods having been stolen by any of them, Patteson, J., after remarking that this seemed to be evidence more of stealing than receiving, told the jury that if they were of opinion that the prisoners stole the goods, they must be acquitted on the present indictment; and the jury being of opinion that the prisoners stole them, they were accordingly acquitted (*f*). So, in order to raise this presumption from the prisoner's possession of the goods, the previous possession of them by the prosecutor or his bailee, or the loss of them, must be clearly proved. Where upon an indictment for horse stealing, the prosecutor proved that he put the horse to agist with a person at a distance; that having heard from that person of the loss of the horse, he went to the field where it had been put to feed, and discovered it was gone; but the agister or his servant was not called, nor was any other evidence given of the loss of the horse: Gurney, B., held this to be insufficient, for it was consistent with all this that the prisoner might have obtained the horse honestly from the agister, and not by felony (*g*).

It is only in the absence of direct evidence of the larceny, or where there is such evidence, but it cannot prudently be depended upon, that the above mode of proving it by circumstantial evidence is resorted to. Where there is direct evidence, however, the larceny of course is proved by the persons who actually saw the prisoner commit it; and if there be at all a doubt whether their testimony will be believed, such part of the above circumstantial evidence may be given, as may be necessary to strengthen and confirm it. In treating of the direct evidence of larceny, it is necessary to consider what is a taking, a carrying away, and a felonious intent, within the definition of larceny.

What a taking.] The taking, in larceny, is either actual or constructive: actual, where the party actually takes the goods out of the possession of the owner or his bailee, *invito domino*, by force or stealth, or the like, upon which it is not necessary to make any further observation. A constructive taking, is where the possession of the goods is obtained by some trick or artifice, or the like, with intent at the time to convert them to the party's own use, but which has not the effect of transferring any right of property in the goods, from the owner to the party who has thus obtained possession of them; if a right of property pass, the offence is not larceny, but an obtaining of goods under false pretences (*h*). A few cases will

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(*f*) *R.* v. *Dursley and others*, 6 Car. & P. 399.

(*g*) *R.* v. *Yend and Haines*, 6 Car & P. 176.

(*h*) See *R.* v. *Johnson et al.*, 21 Law J. 32, m.

sufficiently illustrate this. Davenport was indicted for larceny, in stealing two silver cream ewers from the prosecutor, a silversmith; he was formerly servant to a gentleman who dealt with the prosecutor; some time after he left this gentleman's service, he called at the prosecutor's shop, saying that his master (meaning the gentleman whose service he had left) wanted a silver cream ewer, desired the prosecutor to give it to him, and put it down to his master's account; the prosecutor gave him two ewers, in order that his master might select that which he liked best; the prisoner took both, sold them, and absconded: the prosecutor at the trial swore that he did not charge his customer with these cream ewers, nor did he intend to charge him with either, until he should have first ascertained which of them he would have chosen: it was objected for the prisoner, that this amounted merely to the obtaining of goods under false pretences. and not to larceny; but Bayley, J., held, that as the prosecutor had parted with the possession only, and not the right of property, the offence was larceny; if indeed he had sent but one cream ewer, in execution of the pretended order, and had charged the customer with it, it would have been otherwise (*i*). In a case similarly circumstanced, but where the person in whose name the goods were obtained was not called as a witness, nor was there any evidence that she had not sent the prisoner for the goods; Patteson, J., held, that on that account the prisoner should be acquitted; for *non constat* but that the prisoner had been sent for the goods as she had stated, and had delivered them to the person who had sent her (*k*). The substance of this last decision is, that the pretence by means of which the goods have been obtained, must be proved to be false, in larceny, in the same manner as upon an indictment for obtaining goods under false pretences. So, where it appeared that a servant of the prosecutor being sent to a fair with some oxen, to sell them for ready money, the prisoner bargained with him, and desired him to go to the inn, and he would pay him for them; he went accordingly to the inn, but the prisoner never came; and upon his going back to the fair, he found that the oxen were gone; the prisoner had taken them, and sold some of them: upon the trial of the prisoner as for larceny, these facts were proved, and the servant in his evidence said that he would not have delivered the oxen until he was paid: the jury being of opinion that the prisoner never meant to have paid for the oxen, found him guilty; and the judges afterwards held the conviction to be right (*l*). So,

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(*i*) *R.* v. *Davenport*, cor. Bayley, J., Newcastle Spring Assizes, 1826; and see *R.* v. *Joseph Small*, 8 Car. & P. 46.

(*k*) *R.* v. *Ann Savage*, 5 Car. & P. 143.

(*l*) *R.* v. *Gilbert*, Ry. & M. 185; see *R.* v. *Harvey*, 1 Leach, 467.

where the prisoner went to a shop and asked for change of half-a-crown, and the person attending gave him two shillings and six penny pieces; he then held out the half-crown, and the other just took hold of it by the edge, but never actually got it into his custody; the prisoner immediately ran away both with the half-crown and the change: being indicted for stealing the two shillings and six pennies, Park, J., held that it was larceny, but said that if he had been indicted for stealing the half-crown, he should have entertained great doubt whether the indictment would lie (*m*). On the other hand, where upon an indictment for stealing in the house of a pawnbroker a diamond brooch and other articles, it appeared that the prisoner called at the shop of the pawnbroker with duplicates of the brooch, &c. mentioned in the indictment, which he had before then pawned there for 34*l.*, and desired to redeem them; he, at the same time, showed the pawnbroker's shopman a parcel of loose diamonds which he wished to pawn, and the shopman agreed to lend 160*l.* upon them; he sealed the parcel of diamonds in the shopman's presence, and gave him what he believed, at the time, to be the same parcel; the shopman then gave him the brooch, &c. mentioned in the indictment, and the balance of the 160*l.* after deducting the 34*l.*; for which the brooch, &c. were pledged, and interest; but the parcel upon being afterwards opened, was found to contain some coloured stones of little value: the shopman swore that he was authorized by his master to receive money for pledges, and to lend money on them; and that, when he delivered the articles in question, he parted with them entirely, believing he had received a full equivalent: this case being referred to the judges, they held that it was not larceny, because the shopman parted with the property and ownership, and not merely with the possession (*n*). So, where the prosecutor, a hatter, sold a hat to one of his customers, and the prisoner, knowing the circumstance, sent a messenger to the prosecutor, for the hat in the name of his customer, and obtained it: the judges held this not to be larceny, but obtaining goods under a false pretence merely (*o*). But where, upon an indictment for stealing three chests of tea, the property of S. Tanner and his partners, it appeared that Tanner and Co. were carriers from

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R. v. *Sheppard*, 9 Car. & P. 121; see also *R.* v. *John Campbell*, Ry. & M. 179. *R.* v. *Pratt*, Ry. & M. 250, S. P.; and see Arch. New Cr. Law, 373—375.

(*m*) *R.* v. *Williams*, 6 Car. & P. 390. See *R.* v. *Coleman*, 2 East, P. C. 672. *R.* v. *Oliver*, 4 Taunt. 274, cit. *R.* v. *Aickles*, 2 East, P. C. 675.

(*n*) *R.* v. *Jackson*, Ry. & M. 119; and see *R.* v. *Parkes*, 2 Leach, 614.

(*o*) *R.* v. *Phineas Adams*, R. & Ry. 225. See *R.* v. *Hench*, Id. 163. Arch. New Cr. Law, 375. *R.* v. *Atkinson*, 2 East, P. C. 673.

London to Tewkesbury; the prisoner, Josiah John Longstreeth, calling himself Langstan, came to Tanner's office at Tewkesbury, and inquired if there were any teas for him; the porter informed him that there were three chests directed to J. Creighton, whom he did not know; the prisoner said they were for him, and that the party who sent them had spelt his name wrongly by mistake; he paid the carriage and porterage, the three chests were delivered to him, and he afterwards removed and concealed them; the teas were not in fact his, but belonged to a person named J. Creighton, to whom they were directed: the prisoner, being found guilty, it was referred to the judges to say whether this was a larceny; and they held that it was; because the ownership in the goods was not parted with, the carrier's servant having no authority to deliver them to the prisoner (*p*). In the practice of ring dropping, (which was formerly so prevalent,) if the prosecutor merely deposit his money, &c. with the pretended finder, as a security that he will account with him for his share of the produce of the property found, the offence will be larceny (*q*); but if the prosecutor give him a sum of money, &c. for his share of the property found, it will not (*r*). So, where money is obtained from a man by means of a pretended bet,—if he merely deposit the money with the party as a stakeholder, who hands it to his confederate under pretence that he has won it, the offence is larceny (*s*); but if he pay the money, imagining he has lost the bet, it is not (*t*). But, however well established this general rule may be, there may be cases coming so exactly upon, or so near to, the line of distinction between the one offence and the other, that there may be some difficulty in deciding whether they amount to larceny, or to the obtaining of money, &c. under false pretences. In such cases it is advisable to indict the prisoner as for obtaining money, &c. under false pretences; for by stat. 7 & 8 G. 4, c. 29, s. 53, upon an indictment for the latter offence, if "it shall be proved that he obtained the property in question in any such manner as to amount in law to larceny, he shall not, by reason thereof, be entitled to be acquitted of such misdemeanor."

But where a person obtains possession of goods and chattels, without any trick or artifice, and without, at the time, having any felonious intention of appropriating them to his own use,

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(*p*) *R.* v. *Josiah John Longstreeth*, Ry. & M. 137.

(*q*) *R.* v. *Patch*, 1 Leach, 238. *R.* v. *Watson*, 2 East, P. C. 680. *R.* v. *Moore*, Id. 679.

(*r*) *R.* v. *Wilson and Martin*, 8 Car. & P. 111.

(*s*) *R.* v. *Robson, Gill, Fenster and Nicholson*, R. & Ry. 413; and see *R.* v. *Standley, Jones and Webster*, Id. 305.

(*t*) *R.* v. *Nicholson*, 2 East, P. C. 699.

his afterwards so appropriating them will not, in general, amount to larceny. Thus, where a woman saved some goods of the prosecutor, at a fire which was at his house, and took them home to her lodgings, and the next morning denied that they were in her possession: being tried for stealing them, and the jury being of opinion, that when she first took them, her intentions were to save them from the fire and restore them to the owner, and that she had no intention to appropriate them to her own use until afterwards, the judges held that it was not larceny (*u*). If a man lose goods, and another find them, and not knowing the owner, sell them, or otherwise apply them to his own use, this is not larceny (*x*); but if he know the owner (*y*), or know that he can find him (*z*), it is. Where a person having purchased a bureau at an auction, found a purse and money concealed in a secret drawer of it, which he appropriated to his own use; being apprehended for this by a constable without a warrant, and being afterwards discharged when before the magistrate, he brought his action as for a false imprisonment; and the defendant having justified the arrest as for a felony, the court held that this was a larceny; but it being proved also that the auctioneer had said that he sold all the bureau contained, with the article itself, they held that as this gave the plaintiff a colourable right to the contents of the bureau, abstracting those contents could not be deemed a felonious taking (*a*). But where a purchaser, by mistake, left his purse on the prisoner's market stall, without knowing it; and the prisoner afterwards seeing it there, but not at the time knowing whose it was, appropriated, and subsequently when inquiry was made of him by the owner, he denied all knowledge of it; it was holden that he was guilty of larceny; for the purse, strictly speaking was not lost property, so as to make it necessary to inquire whether the prisoner had used reasonable means to find the owner (*b*). So, where goods are bailed by the owner to another, the bailee, whilst the bailment subsists, cannot, in general, be said to commit larceny of them, by coverting them to his own use; because, in such a case, there is no felonious taking, the bailee being already in the legal possession of the goods (*c*). If a man give his watch to a watchmaker to repair, and he sell it, this is not larceny,

(*u*) *R.* v. *Leigh*, 2 East, P. C. 694.

(*x*) 1 Hawk. c. 33, s. 2. 1 Hale, 506. *R.* v. *Reed et ux.*, Car. & M. 306. *R.* v. *Mole*, Car. & K. 417. *R.* v. *Thurborn*, 18 Law J. 140, m.; and see *R.* v. *York*, 18 Law J. 38, m.

(*y*) *R.* v. *Wynn*, 2 East, P. C. 644. *R.* v. *Lamb*, Id. 664.

(*z*) *R.* v. *Pope*, 6 Car. & P. 346. *R.* v. *Preston*, 21 Law J. 41, m.

(*a*) *Merry* v. *Green et al.*, 10 Law J. 154, m.; 7 Mees. & W. 623.

(*b*) *R.* v. *West*, 24 Law J. 4, m.

(*c*) See Arch. New Cr. Law, 382, and *R.* v. *Thomas*, 9 Car. & P. 741.

unless, indeed, he obtained it by some trick or fraud, with the intent, at the time, of converting it to his own use (*d*). Even where a man hired a horse for a particular purpose, but the day following, after the purpose for which he borrowed the horse was over, he rode the horse in a different direction, and sold it; and upon his trial, as for a larceny, the jury found that, at the time he borrowed the horse, he had no felonious intention: the judges held that this was not larceny; that if the prisoner had not a felonious intention at the time he took the horse, his subsequent withholding and disposing of it did not constitute a new felonious taking; and that the doctrine laid down in 2 *East, P. C.* 690, 694, and 2 *Russell*, 1089, 1090, to the contrary, was not correct (*e*). But if the jury had been of opinion that he had such felonious intention at the time of the bailment, the prisoner must have been found guilty (*f*); this is always a question for the jury to determine. Also, if the bailment be determined, and he who was bailee afterwards take the goods, he may be indicted for larceny, as if they had never been bailed (*g*). And if a carrier, or other bailee, open a bale or package of goods entrusted to him, take out part, and dispose of that part to his own use, this is considered such a proof of an original felonious intention, that it has always been holden to be larceny (*h*); although it would be otherwise, if he disposed of the whole bale or package without breaking it (*i*). But where the prosecutor sent forty sacks of wheat to the prisoner, a warehouseman and wharfinger, for safe custody, and the prisoner emptied several of the sacks of the wheat contained in them, which he sold, and then substituted for it other wheat of an inferior quality: it was doubted, at first, whether, as the prisoner had appropriated to his own use the whole of the wheat in each of the sacks which he had emptied, he could be deemed guilty of larceny; but upon the question being referred to the judges, they were unanimously of opinion that it was larceny, and the prisoner had judgment accordingly (*k*). The rule here mentioned, however, as to carriers and other bailees, does not extend to their servants: and, therefore, if a bailee's servant sell or dispose of a bale or package of goods entrusted to his master, he will be guilty of larceny (*l*). So, the owner's own servant is

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(*d*) *R.* v. *Levy*, 4 Car. & P. 431, cor. Vaughan, B. *R.* v. *Thristle*, 19 Law J. 66, m.

(*e*) *R.* v. *W. Banks*, R. & Ry. 441.

(*f*) See *R.* v. *John Stock*, Ry. & M. 87.

(*g*) *R.* v. *Steer*, 18 Law J. 30, m.

(*h*) See 3 Inst. 107. 1 Hale, 505. Arch. New Cr. Law, 384. *R.* v. *Edward Madox*, R. & Ry. 92. *R.* v. *Pratley*, 5 Car. & P. 533. *R.* v. *Fletcher*, 4 Id. 545. *R.* v. *Howell*, 7 Id. 325. *R.* v. *Mary Ann Jones*, 7 Id. 151. *R.* v. *Jenkins*, 9 Id. 38. *R.* v. *Poyser*, 20 Law J. 191, m. *R.* v. *Reed*, 23 Law J. 25, m.

(*i*) *Supra.*

(*k*) *R.* v. *Brazier*, R. & Ry. 337.

(*l*) *R.* v. *Harding, Hayes, Cooke & Mears*, R. & Ry. 125.

not deemed a bailee in this respect, and is liable to be indicted for larceny if he take and dispose of the goods of his master to his own use; for the possession of the servant is deemed the possession of the master (*m*). And therefore if a gentleman's butler having the care and custody of his plate, or his shepherd of his sheep, embezzle them, they are as much guilty of larceny as if they took them out of the actual custody of their master (*n*). And where a farmer hired a person, who sometimes acted as drover to him, but was not regularly in his service, to drive some sheep for him to Grantham fair, at the wages of 3*s*. a day; the master sold some of them there, and then sent the remainder by the prisoner to Smithfield market; but the prisoner, instead of taking them there, sold them, and absconded with the money: although the jury found that the prisoner, at the time he took the sheep under his care, had no intention to steal them, yet the judges held him to be guilty of larceny; for, being the owner's servant, his possession was the possession of the owner, who therefore had not parted with either the possession or the right of property (*o*). Where, in a similar case, there was no proof of the prisoner being the prosecutor's servant, it was holden that he could not be convicted (*p*). But in a recent case before Patteson, J., where it appeared that the prosecutor had employed the defendant to take his barge to a particular place, paid him his wages in advance, and gave him a distinct sum of three sovereigns to pay the tonnage dues; the defendant took the barge part of the way, paid 2*l*. for dues, but the other sovereign he appropriated to his own use: Patteson, J., held that it was larceny; and he said that in such a case it was not necessary to prove the relation of master and servant: for if a man give another money to apply to a particular purpose, and he appropriate it to another purpose with a felonious intent, it is larceny (*q*). If a man give goods to another to carry, or the like, and he himself be present at the time: this is not a bailment, nor is the owner deemed to have parted with the possession of the goods; and therefore if the person to whom the goods are so intrusted, run away with them, he is guilty of larceny (*r*). The distinction seems to be, that where a man has merely the custody of a thing, and he appropriate it to his own use, he is guilty of larceny, although he had no such intent at the time he first received it; but if he had such a

(*m*) See *R*. v. *Harvey*, 9 Car. & P. 353.

(*n*) 1 Hale, 506; and see *R*. v. *Robinson*, 2 East, P. C. 565. *R*. v. *Bass*, Id. 566. *R*. v. *Paradice*, Id. 565. *R*. v. *Chipchase*, 2 Leach, 699. *R*. v. *Hammon*, 4 Taunt. 304

(*o*) *R*. v. *M'Namee*, Ry. & M. 368.

(*p*) *R*. v. *Goodbody*, 8 Car. & P. 665.

(*q*) *R*. v. *Goode*, Car. & M. 582. S. P. *R*. v. *Beaman*, Id. 595.

(*r*) See 1 Hawk. c. 33, s. 2. 2, East, P. C. 683, 684.

possession of it as would give him a special property in it, then his appropriating it to his own use would not be larceny, unless he had the intention so to appropriate it when he took it into his possession (*s*). But a man cannot be guilty of larceny, by selling another man's goods to a person in whose possession they already are (*t*).

Formerly, if goods, &c., which had never been in the master's possession, were delivered to the clerk or servant for the master's use, and the clerk or servant, instead of delivering them to his master, sold them, or otherwise converted them to his own use, this was not larceny (*u*). This was afterwards altered by statute (*x*); and now by stat. 7 & 8 G. 4, c. 29, s. 47, "if any clerk or servant, or any person employed for the purpose or in the capacity of a clerk or servant, shall, by virtue of such employment, receive or take into his possession any chattel, money or valuable security, for or in the name or on the account of his master, and shall fraudulently embezzle the same, or any part thereof: every such offender shall be deemed to have feloniously stolen the same from his master, although such chattel, money, or security was not received into the possession of such master, otherwise than by the actual possession of his clerk, servant or other person so employed." It is usual, however, in such a case, to indict specially for the embezzlement (*y*).

Also, persons who have the bare use of the goods of another, are not deemed in law bailees: and, therefore, if a guest at an inn or tavern steal the plate or other articles, of which he has the use at his meals, &c., he is guilty of larceny, for he is said to have the use merely of them, and not the possession (*z*). But the tenant of furnished lodgings is deemed to have, not merely the use, but the possession also, of the furniture let with the lodgings; and formerly, if he sold or disposed of it for his own use, it was not deemed larceny. But now by stat. 7 & 8 G. 4, c. 29, s. 45, the tenant in such a case, may be indicted as for a simple larceny, and punished accordingly (*a*).

But a joint tenant or tenant in common of a personal chattel, cannot be guilty of larceny, by taking it and disposing of the whole to his own use; it is merely the subject of a civil remedy (*b*). But if he take it out of the hands of a bailee, with whom it is left for safe custody, or the like, and the effect of such taking will be to charge the bailee, it is otherwise. Therefore, where a woman, a member of a benefit society,

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(*s*) See *R.* v. *Jones*, Car. & M. 611. See *R.* v. *Evans*, Id. 632.

(*t*) *R.* v. *Jones*, *supra*.

(*u*) *R.* v. *Bazely*, 2 Leach, 835. *R.* v. *Bull*, Id. 841, cit. *R.* v. *Waike*, 2 East, P. C. 570.

(*x*) See stat. 39 G. 3, c. 85.

(*y*) See *ante*, p. 106.

(*z*) 1 Hal. 506. 1 Hawk. c. 33, s. 6.

(*a*) *Vide post.*

(*b*) 1 Hal. 513.

entered the room of a person with whom a box, containing the funds of the society, was deposited for safe custody, and took and carried away the box with intent to appropriate the contents to her own use: the judges were clearly of opinion that this was larceny, the bailee being answerable to the society for the property (*c*). So, a man cannot be guilty of larceny in taking his own goods, unless they be in the hands of a bailee, and the taking will have the effect of charging him. Where the owner of goods had them shipped for exportation by shipping agents, who gave the usual bond to the custom-house; but the owner, for the purpose of defrauding the revenue, had the bales re-landed, the goods taken out and rubbish substituted for them: four of the judges held this not to be larceny, as the intent was, not to cheat or charge the agents, but to defraud the crown; but seven of the judges held it to be larceny, because the agents having given a bond to the custom-house, the fraud would have the effect of charging them, by rendering them liable to a suit upon their bond (*d*). So, a wife cannot be said to be guilty of larceny of the goods of her husband, except in those cases in which the husband himself might be guilty as just now mentioned: for they are one person in law (*e*). Therefore, where money belonging to a friendly society was deposited in a box, and placed in the custody of one of the members, and his wife broke open the box and stole the money: the judges held that an indictment against her, as for larceny, could not be maintained (*f*). Dalton says, that if a wife take the goods of her husband, and give them to her avowterer, who knowing it, carries them way, the avowterer is thereby guilty of larceny (*g*). And where the wife of the prosecutor, and a man with whom she afterwards cohabited, jointly took money and goods belonging to the husband: the judges held that an indictment for larceny would lie against the man, although not against the wife; and that notwithstanding the wife's consent, the property must be considered as having been taken *invito domino* (*h*). So, where the goods of the husband were delivered by the wife to the man with whom she was about to elope, and with whom she then eloped and afterwards lived in adultery, Coleridge, J., held the man to be guilty of larceny (*i*).

The taking must be *invito domino*. But these words must be understood as meaning merely the absence of all free and voluntary consent, upon the part of the owner, to the party

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(*c*) *R.* v. *Phœbe Bramley*, R. & Ry. 478. *R.* v. *Cain*, Car. & M. 309.

(*d*) *R.* v. *Wilkinson & Marsden*, R. & Ry. 470.

(*e*) 1 Hal. 514.

(*f*) *R.* v. *Willis*, Ry. & M. 375.

(*g*) Dalt. c. 104. See *R.* v. *Harrison*, 1 Leach, 47.

(*h*) *R.* v. *Tolfree*, R. & M. 243.

(*i*) Car. & M. 112. *R.* v. *Featherstone*, 23 Law J. 127, m.

taking his goods, and appropriating them to his own use (*k*). Where thieves had applied to a servant to aid them in robbing his master's house, and the servant having told his master of it, the latter, in order to detect the thieves and have them apprehended, desired his servant to carry on the affair, consented to his opening the door, marked the property, and even left some of it in a place where the robbers were likely to come: this was holden to be no defence to an indictment against the robbers (*l*).

What a carrying away.] The prosecutor must prove a carrying away, as well as a taking, of the goods in question. But if they be detached from the place where they were taken, the slightest removal from the place, will be a sufficient carrying away to constitute larceny. Where it appeared that the prisoner, who was sitting on the driving box of the Exeter mail coach, took hold of the upper end of a bag that was in the front boot, and lifted it from the bottom of the boot on which it rested; he handed the upper end of it to a person near him, and they were both endeavouring to pull it out of the boot, with a common intent to steal it, when the guard of the coach coming up, they dropped the bag again into the boot: the judges were of opinion that this was a complete asportation of the bag, sufficient to constitute larceny (*m*). So, where it appeared that the prisoner drew a pocket-book out of the inside breast-pocket of the prosecutor's coat, about an inch above the top of the pocket; but the prosecutor suddenly putting his hand up, the prisoner let go the book whilst it was still about the person of the prosecutor, and the book fell back again into the pocket: the judges held this to be a sufficient asportation to constitute a simple larceny, although the larceny from the person was not complete (*n*). But where a thief was not able to carry off goods he intended to steal from a shop, on account of their being attached by a string to the counter, this was holden not to be a sufficient asportation to constitute larceny, because there was no severance, the goods all the time being attached to the counter (*o*). So, where a thief was prevented carrying off a purse, on account of some keys attached to the strings of it getting entangled in the owner's pocket, it was holden not sufficient, for the same reason (*p*). So, where the prisoner merely turned a bale of goods on end where it lay, for the purpose of cutting it open and taking the goods out, and he was detected before he effected

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(*k*) See *R.* v. *Tolfree, supra.*

(*l*) *R.* v. *Egginton*, 2 Bos. & Pul. 508.

(*m*) *R.* v. *James Walsh*, Ry. & M. 14.

(*n*) *R.* v. *Wm. Thompson*, Ry. & M. 78. See also *R.* v. *Pitman*, 2 Car. & P. 423. *R.* v. *Simpson*, Kel. 31. *R.* v. *Coslet*, 1 Leach, 256.

(*o*) *Anon.* 2 East, P. C. 556.

(*p*) *R.* v. *Wilkinson*, 1 Hal. 508.

his purpose: this was holden not to be a sufficient asportation to constitute larceny (q).

The personal goods of another.] At common law, larceny can be committed of personal chattels only; and gas is deemed a personal chattel, just as much as oil or wine (r). But larceny at common law cannot be committed of things attached to the freehold, such as trees or vegetables growing, fixtures, or the like, for they are not personal chattels (s); not of bills of exchange or other written securities for money or agreements, for they are merely choses in action, not chattels (t); not of animals *feræ naturæ*, unless tamed or confined, and fit for the food of man. But horses, mules, asses, oxen, sheep, swine, goats are personal chattels, and the subject of larceny; so are all other domestic animals, which are fit for the food of man, such as turkies, geese, hens, ducks, &c., and their eggs and their young (u). So, pulling the wool off a sheep's back and stealing it, has been holden to be larceny (v). But dogs and cats are not the subject of larceny, at common law, not being fit for the food of man (x). Animals *feræ naturæ*, if reclaimed or confined, and fit for the food of man,—as fish in a pond (y); pheasants in a pheasandry (z); pigeons in an ordinary dove-cot, although they have free access to the open air (a), or the like,—are the subjects of larceny at common law; but not so, if not reclaimed or confined (b), such as fish in a river or other great water, where they are at their natural liberty (c), or the like; or even if reclaimed, still if they are not fit for the food of man, such as monkies, foxes, &c., they are not the subject of larceny at common law (d). Where upon an indictment for stealing "five live tame ferrets confined in a certain hutch," although they were proved to be valuable animals, the judges held that the stealing of them was not larceny, and judgment was accordingly arrested (e). But it is laid down, in books of great authority, that stealing swans, marked or pinioned, or confined in a pond or private river, is larceny (f); and that stealing a hawk reclaimed is also larceny (g). In all these cases, however, which are not larceny at common law, the offence of stealing has been made punishable by statute, as we

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(q) *R.* v. *Cherry*, 2 East, P.C. 556.

(r) *R.* v. *White*, 22 Law J. 123, m.

(s) 1 Hawk. c. 33, s. 34.

(t) 1 Hawk. c. 33, s. 35. *R.* v. *Mote Watts*, 23 Law J. 56, m.

(u) 1 Hawk. c. 33, s. 43.

(v) 1 Hawk. c. 33, s. 27. *R.* v. *Martin*, 1 Leach, 171.

(x) 1 Hawk. c. 33, s. 26.

(y) 1 Hawk. c. 33, ss. 39, 41.

(z) *R.* v. *Jones*, 2 Russ. 84.

(a) *R.* v. *Cheafor*, 15 Shaw's J. P. 801.

(b) 1 Hale, 511, 512.

(c) 1 Hawk. c. 33, s. 39.

(d) 1 Hawk. c. 33, s. 26.

(e) *R.* v. *Searing*, R. & Ry. 350.

(f) 1 Hale, 511. 1 Hawk. c. 33, s. 42.

(g) 1 Hawk. c. 33, s. 26.

shall see hereafter. There is one case however, not larceny at common law, but made so by statute, which it may be necessary to mention more particularly, namely, where chattels, money, or securities for money, which had never been in the master's possession, were delivered to his clerk or servant for his use, and the clerk or servant, instead of delivering them to his master, sold them, or otherwise converted them to his use, —this formerly was not larceny (*h*). But the law was afterwards altered by statute (*i*); and now, by stat. 7 & 8 G. 4, c. 29, s. 47, "every such offender shall be deemed to have feloniously stolen the same from his master, although such chattel, money, or security, was not received into the possession of such master, otherwise than by the actual possession of his clerk, servant, or other person so employed;" and he may now be convicted of this offence, upon an indictment for larceny (*j*).

Of any value.] Formerly the stealing of goods, &c., of the value of twelve pence or under, was only petty larceny: above that value, was deemed grand larceny; and in the indictment, therefore, it was necessary and material to show the value of the articles stolen; and the value of each article alleged to be stolen was stated, that in case the jury should find the defendant guilty of stealing one of them only, the offence might appear upon the record to be grand larceny. But the distinction between grand and petty larceny was abolished by stat. 7 & 8 G. 4, c. 29, s. 2; since which, it does not appear to have been necessary to state or prove the value of the article stolen, and I therefore omit it in the commitment. In *R.* v. *Perry* (*k*) the first count of the indictment was for stealing a cheque, but there being some doubt of a conviction on that count, as the cheque required a stamp and had none, a second count was added for stealing a piece of paper of the value of one penny of the goods and chattels of the prosecutor: the judges held that the defendant was properly convicted on the second count. Here the value of the piece of paper, though laid at a penny, could not be worth more as paper than perhaps the tenth part of a farthing; and if it were necessary to show that it was of some value, alleging it to be of the goods and chattels of the prosecutor was sufficient for the purpose. By stat. 14 & 15 Vict. c. 100, s. 24, however, no indictment [and *à fortiori* no commitment] shall be deemed insufficient for want of the statement of the value or price of any matter or thing, in any case where it is not of the essence of the offence.

(*h*) *R.* v. *Bazely*, 2 Leach, 835. *R.* v. *Bull*, Id. 841, cit. *R.* v. *Waite*, 2 East, P. C. 570.

(*i*) See 39 G. 3, c. 85.

(*j*) 14 & 15 Vict. c. 100, s. 13.

(*k*) 1 Car. & K. 725.

Felonious intent.] The taking, &c., must have been with a felonious intent, that is to say, it must be without any *bonâ fide* claim of right to the goods taken, on the part of the person taking them; it must be done fraudulently, and with the intent wholly to deprive the owner of the property. If the taking, &c., be by mistake, or under a *bonâ fide* claim of right, however mistaken, it cannot be larceny (*l*). So, if not done with intent wholly to deprive the owner of his property, it cannot be larceny (*m*). Thus, for instance, where upon an indictment for larceny, it appeared that the prisoner had clandestinely taken the articles alleged to be stolen, merely for the purpose of inducing a young girl, the owner of them, to call for them, and thereby to give him an opportunity of soliciting her to commit fornication with him: the judges held that this was not a felonious taking (*n*). So, where, upon an indictment for stealing two horses, it appeared that the prisoners took the two horses out of the prosecutor's stables, rode them about thirty miles, and then left them at an inn, saying they would be back in three hours, and desiring that the horses should be taken care of; and they were afterwards taken on the same day about fourteen miles distant from the inn, and walking in a direction from it: the jury found that the prisoners took the horses merely for the purpose of riding them the thirty miles, and that they left them at the inn without intending to come back for them or dispose of them; and ten of the judges held this not to be larceny (*o*). But where the prisoner by mistake drove away with his flock of sheep one of the prosecutor's lambs, and afterwards on finding out that he had the lamb immediately sold it as his own: it was holden that as the original taking was not rightful, but was an act of trespass, the subsequent appropriation was a larceny (*p*). Upon a similar indictment for horse-stealing, it appeared that the horse in question had been before stolen by one Haworth, who was about to be tried for the offence; and the prisoner, in order (as he thought) to screen Haworth from conviction, clandestinely took the horse out of the prosecutor's stable, led him to a coal-pit, and backed him into it, and the horse was killed: it was objected at the trial that this was not a larceny, because the taking appeared not to have been done with intention to convert the horse to the use of the taker *animo furandi et lucri causâ*; but seven of the judges held it to be larceny; and six of this majority held, that to constitute larceny, it is not essential that the taking should be *lucri causâ*; if it be

(*l*) 1 Hal. 506, 509.

(*m*) *R.* v. *Holloway*, 18 Law J. 60, m. But see *R.* v. *Richards*, 1 Car. & K. 532.

(*n*) *R.* v. *Richard Dickenson*, R. & Ry. 420; and see *R.* v. *Cornelius Von Muyen*, R. & Ry. 118.

(*o*) *R.* v. *Philips et al.*, 2 East, P. C. 662, 663.

(*p*) *R.* v. *Riley*, 22 Law J. 48, m.

fraudulent, and with intent wholly to deprive the owner of the property, it is sufficient (*q*). And where a servant to a tallow chandler removed portions of fat belonging to his master from one part of the premises to another, and put it into a pair of scales used for weighing fat offered by other persons for sale, intending to sell it to his master, and appropriate the price to his own use: this was holden to be larceny (*r*). So, a servant stealing oats from his master, to give to his master's horses, is larceny (*s*).

And the felonious intent must be entertained at the time of the taking. This has been already incidentally mentioned in many instances (*t*). Where a letter, containing a bill of exchange, directed to J. M., St. Martin's Lane, Birmingham, was delivered to another person of that name living near St. Martin's Lane, there being in fact no person residing in the lane of that name; the party, upon opening the letter, must have perceived that it was not for him, but he nevertheless applied the bill to his own use: the judges held this not to be larceny, as it did not appear that the party had any *animus furandi* at the time he received the letter (*u*).

Punishment.] Simple larceny is punishable with transportation for seven years, or imprisonment for not more than two years [with or without hard labour (*v*)], and, if a male, to be once, twice, or thrice publicly or privately whipped, if the court shall so think fit, in addition to such imprisonment (*w*); and in this, and all other cases within this Act, the court may direct the offender to be kept in solitary confinement for the whole or any portion of such imprisonment (*x*).

Commitment.] The commitment is in the common form, *ante*, vol. 1, p. 263, describing the offence thus:—*On* ——, *at* ——, *certain money of C. D., and one woollen cloth coat, and one linen shirt, of the goods and chattels of the said C. D., feloniously did steal, take and carry away. And you the said keeper*, &c.

The goods stolen may be laid to be the property, either of the actual owner, although he may never have been in possession of them (*y*), or of a bailee in whose possession they were

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(*q*) *R.* v. *Wm. Cabbage*, R. & Ry. 292.

(*r*) *R.* v. *Hall*, 18 Law J. 62, m. S. P. *R.* v. *Manning & Smith*, 22 Law J. 21, m.

(*s*) *R.* v. *Privett & Goodall*, 2 Car. & K. 114. *R.* v. *Handley*, Car. & M. 547. *R.* v. *Morfit et al.*, R. & Ry. 307.

(*t*) See *R.* v. *Leigh*, *ante*, p. 226. *R.* v. *W. Banks*, *ante*, p. 227.

(*u*) *R.* v. *James Mucklow*, Ry. & M. 160.

(*v*) 7 & 8 G. 4, c. 29, s. 4.

(*w*) Id. s. 3.

(*x*) Id. s. 4.

(*y*) *R.* v. *Remnant*, R. & Ry. 136.

at the time they were stolen (*z*); the one has the actual property, the other a special property, in them (*a*). But where the owner of a house let a room in it furnished to a lodger, and some of the furniture was stolen by a third party: the judges held that the furniture stolen should have been laid to be the property of the lodger, and not of the owner of the house; for the owner was not in possession, nor entitled to the possession of it, and could not have maintained trespass (*b*). But where the person, in whose possession they are at the time they are stolen, is merely a servant of the owner, in that case the goods must be laid as the property of the owner (*c*). If the owner be dead at the time of the larceny, the goods must be stated to be the property of the executor, if there be one, or of the administrator, if at that time there be one, or if neither, they must be laid to be the property of the ordinary (*d*). The clothes upon a child may be described as the property, either of the father of the child, or of the child itself (*e*). If the goods be the property of two or more persons, as partners, joint-tenants, parceners, or tenants in common, it is sufficient in the indictment to state them to be the property of any one of them "and another" or "others," as the case may be (*f*); and it should seem that the evidence need not be more particular. If the goods stolen had been provided for the use of the poor of any parish, &c., to be used in the workhouse or poorhouse, or by the master or mistress thereof, or the workmen or servants therein, they may be described as the property of the overseers "for the time being," without specifying their names (*g*); and where goods were laid as the property of "the overseers of the poor for the time being," of the parish of K., the judges held it to be sufficient, the words "for the time being" sufficiently importing that the goods were the property of those who were overseers at the time of the theft (*h*). So, if the larceny be of goods provided at the expense of any county, riding or division, it will be sufficient to describe them as the property of the inhabitants of such county, &c., without specifying the names of any (*i*); and the evidence may be according. So, materials, tools, &c., for making or repairing highways, may be described as belonging to the surveyors of the highways of the parish, &c., for the time being, without specifying their names (*k*). So, property under turnpike trusts, materials, tools, &c., for

(*z*) See *R.* v. *Vincent & West*, 21 Law J. 109, m.

(*a*) See Arch. New Cr. Law, 357, 358.

(*b*) *R.* v. *John Belstead*, R. & Ry. 411. S. P. *R.* v. *George Brunswick*, Ry. & M. 26.

(*c*) 2 East, P. C. 652.

(*d*) *R.* v. *George and Ann Smith*, 7 Car. & P. 147.

(*e*) *R.* v. *Hughes*, Car. & M. 593.

(*f*) 7 G. 4, c. 64, s. 14.

(*g*) Id. s. 16.

(*h*) *R.* v. *Went*, R. & Ry. 350

(*i*) 7 G. 4, c. 64, s. 15.

(*k*) Id. s. 16.

making or repairing a turnpike road, may be described as belonging to the trustees or commissioners of such road, without specifying their names (*l*). So, property under the commissioners of sewers may be described as belonging to the commissioners of sewers within or under whose view, cognizance or management, it shall be, without specifying their names (*m*). And the property of a benefit society, enrolled under stat. 10 G. 4, c. 56, may be described as the goods of their treasurer by his proper name (*n*). If the name of the prosecutor be mis-spelt, it will be immaterial (*o*). If he be called by a name by which he is usually known, it will be sufficient (*p*), although it be not his real name (*q*).

Where the goods consist of several articles, they must have been all stolen either at the same time, or at not more than three separate times within six calendar months (*r*); otherwise each larceny must be made the subject of a distinct indictment. If they be comprised in one indictment, whether in the same or in different counts, and it appear at the trial that the goods were stolen at several distinct times, not within six calendar months altogether, the court will put the prosecutor to his election for which act of larceny he will prosecute, and will oblige him to confine his evidence to that (*s*). But the court will not thus put the prosecutor to his election, merely because the goods might have been, and probably were, stolen at different times, if, from any thing appearing in the case, it be not impossible that they might all have been stolen at one time (*t*).

For the purpose of committing the offender, it may be necessary to consider in what county he may be tried. At common law, the offence must have been proved to have been committed in the county or riding in which the offender was tried: although as to the particular parish or place stated, it was immaterial whether it was rightly stated or not. But now if the offence be committed on the borders of two or more counties, or within five hundred yards of such boundaries, it may be tried in either county, in the same manner as if it had been actually committed therein (*u*); this however does not extend to trials in limited jurisdictions, but to trials in counties only (*x*). Or if committed on a person, or with respect to property, in or upon a coach, waggon, or other carriage, or on

(*l*) 7 G. 4, c. 64, s. 17.

(*m*) Id. s. 18.

(*n*) 10 G. 4, c. 56, s. 21. *R.* v. *Cain*, Car. & M. 309.

(*o*) *R.* v. *Foster*, R. & Ry. 412.

(*p*) *R.* v. *Berriman*, 5 Car. & P. 601. *Anon.*, 6 Car. & P. 408.

(*q*) *R.* v. *Norton*, R. & Ry. 510; and see Arch. New Cr. Law, 79.

(*r*) 14 & 15 Vict. c. 100, s. 17.

(*s*) Id.

(*t*) *R.* v. *Dunn & Smith*, Ry. & M. 146. Arch. New Cr. Law, 361.

(*u*) 7 G. 4, c. 64, s. 12.

(*x*) *R.* v. *Welsh*, R. & M. 175. Arch. New Cr. Law, 65.

board a vessel, &c., on a navigable river, canal or inland navigation, the offence may be tried in any county through which the carriage or vessel may have passed in its journey or voyage, in the same manner as if it had been actually committed in such county (*x*). At common law, also, if a man stole goods in one county, and carried them into another, he might be indicted and tried in either, for he was deemed guilty, as well of a taking, as of a carrying away, in both; and now, by stat. 7 & 8 G. 4, c. 29, s. 76, if any person, having stolen or otherwise feloniously taken any chattel, money or valuable security, or other property whatsoever, in any one part of the United Kingdom, shall afterwards have the same property in his possession in any other part of the United Kingdom, he may be dealt with, indicted, tried and punished for larceny or theft in that part of the United Kingdom where he shall have such property, in the same manner as if he had actually stolen or taken it in that part (*y*). Where a man stole a brass furnace in Radnorshire, broke it in pieces there, and then brought the pieces of brass into the county of Hereford: Hullock, B., held that he could not be indicted in Hereford for stealing the furnace there, it never having in fact been there (*z*). But no distance of time between the stealing in one county, and carrying the property in another, will prevent the party from being indicted in the latter county; and therefore, where the property was stolen by the prisoner in Yorkshire in November, 1823, and brought by him into Durham in March, 1824, the judges held that he might be indicted for the larceny in Durham (*a*). Where the prisoners stole two horses at different times and at different places in Somersetshire, but brought both at the same time into Wilts, and had them there together in their possession: Littledale, J., held that this did not warrant the including both larcenies in one indictment; and he therefore put the prosecutor to his election as to which offence he would prosecute (*b*).

(*x*) 7 G. 4, c. 64, s. 13.

(*y*) See *R.* v. *Prowes*, Ry. & M. 349.

(*z*) *R.* v. *Halloway*, 1 Car. & P. 127.

(*a*) *R.* v. *Parkin*, R. & M. 45.

(*b*) *R.* v. *Smith & Jefferies*, R. & M. N. P. C. 295.

2. *Larceny of Valuable Securities.*

Debentures, bills, bonds, &c.] If any person shall steal any tally, order, or other security whatsoever, entitling or evidencing the title of any person or body corporate to any share or interest in any public stock or fund, of this or any foreign state, or in any fund of any body corporate, company, or society, or to any deposit in any savings' bank,—or shall steal any debenture, deed, bond, bill, note, warrant, order, or other security whatsoever for payment of money, whether of this or any foreign state,—or shall steal any warrant or order for the delivery or transfer of goods or valuable thing: felony, punishable in the same manner as if he had stolen any chattel of like value. And each of the valuable documents hereinbefore enumerated shall throughout this Act be deemed to be included under the words " valuable security " (*a*).

The instrument must appear to be such as is meant by the statute, and must be so described. Where some country bank notes, being paid by the agent in London, were sent by him to the country bankers, by whom they were to be reissued; on their way they were stolen by the prisoner, and he was indicted for stealing the bank notes in the ordinary form, and also for stealing certain pieces of paper with certain valuable stamps upon them: the judges seemed to be of opinion that this could not be considered a stealing of bank notes, inasmuch as it could not be deemed that the sums payable and secured thereby, were due and unsatisfied to the prosecutors; but they held that the prisoner was rightly convicted of stealing the paper and stamps (*b*). So, where the prisoner was indicted for receiving certain stamped pieces of paper, the goods and chattels of the prosecutor, knowing the same to have been stolen; it appeared that the prosecutors were country bankers; that one of the partners had received a large parcel of their notes from their London agents, which had been paid in London, and he was taking them into the country, for the purpose of reissuing them, when they were stolen from him: the prisoner being convicted, the judges

(*a*) 7 & 8 G. 4, c. 29, s. 5.

(*b*) *R.* v. *Henry Clark,* R. & Ry. 181.

were of opinion that the notes were properly described in the indictment as the "goods and chattels" of the prosecutors; some of them doubted whether they could have been considered as "valuable securities" within the statute (*c*).

But in another case, where it appeared that the prosecutor, in answer to an advertisement offering an advance of money upon loan, sent a letter to the address therein mentioned, stating his wish to borrow 5000*l*., and the prisoner called upon him in consequence of it; the prisoner offered to obtain the loan for him, upon his acceptance of ten bills of exchange for 500*l*. each, and he produced ten 6*s*. stamps, which the prosecutor accepted in blank, and which the prisoner took away with him, and afterwards had bills drawn upon them for 500*l*. each, by a person in concert with him, of the name of Clissold: he was afterwards indicted for this, as for a larceny of ten bills of exchange for 500*l*. each, of ten pieces of paper each stamped with a 6*s*. stamp, and of ten pieces of paper with the words "Accepted, F. Dugdale Astley, payable at Messrs. Praed & Co., 189, Fleet-street, London," upon each: Littledale and Bosanquet, JJ., and Bolland, B., held that the prisoner could not be convicted upon this evidence; when these acceptances were obtained by him, they were not bills of exchange, orders or securities for money, neither drawer's name, sum, nor date being upon them, and of course they were of no precise or definite value; nor could the prisoner be convicted on those counts which described the acceptances as ten pieces of paper with stamps on them, &c., because the stamps never belonged to the prosecutor, but to the prisoner (*d*). Where, however, a prisoner was indicted for stealing a cheque, and in one count it was named an order for the payment of money, and in another count a piece of paper; and it was objected that the cheque being issued at a greater distance than fifteen miles from the bankers was not a valuable security by stat. 55 G. 3, c. 184, and therefore the prisoner could not be convicted: it was holden that at all events he could be convicted of stealing the piece of paper (*e*).

To be a valuable security for money, within the meaning of the statute, the bill, &c., must be stamped, where by law such a security requires a stamp. And therefore where a person was indicted, upon another section of the same statute, for obtaining an order for the payment of 2*l*. by false pretences, and the order appeared to be an unstamped cheque upon a banker, which, from the manner in which it was drawn, required a stamp, the judges held that it was not a valuable security within the meaning of the Act (*f*).

(*c*) *R.* v. *Vyse*, Ry. & M. 218.

(*d*) *R.* v. *Minter Hart*, 6 Car. & P. 106; and see *R.* v. *John Smith*, 21 Law J. 111, m. *R.* v. *Frampton*, 2 Car. & K. 47.

(*e*) *R.* v. *Perry*, 1 Car. & K. 725.

(*f*) *R.* v. *Yates*, Ry. & M. 170.

Commitment:—*On ——, at ——, feloniously did steal, take and carry away one promissory note [bill of exchange, &c.,* describing thus shortly the security stolen], *for the payment of the sum of sixty-five pounds, and of the value of sixty-five pounds, and two other promissory notes for the payment of five pounds each, and of the value of five pounds each, the said several promissory notes being the property of [the said] C. D., and the said several sums of money payable upon and secured by the same being then due and unsatisfied to the said C. D.: against the form of the statute in such case made and provided. And you the said keeper,* &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 391.

Deeds, &c. relating to real property.] And if any person shall steal any paper or parchment, written or printed, or partly written and partly printed, being evidence of the title or of any part of the title to any real estate: misdemeanor, transportation for seven years, or such other punishment, by fine or imprisonment, or by both, as the court shall award; and in any indictment for such offence, it shall be sufficient to allege the thing stolen to be evidence of the title, or of part of the title, of the person or some one of the persons having a present interest, whether legal or equitable, in the real estate to which the same relates, and to mention such real estate or some part thereof; and it shall not be necessary to allege the thing stolen to be of any value (*g*).

Commitment:—*On ——, at ——, a certain written parchment, the property of the said C. D., unlawfully did steal, take, and carry away, the said written parchment being then and there evidence of [part of] the title of the said C. D. to certain real estate called ——, in which the said C. D. then had and still hath a present interest: against the form of the statute in such case made and provided. And you the said keeper,* &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 394.

Wills or codicils.] If any person shall, either during the life of the testator or testatrix, or after his or her death, steal, or for any fraudulent purpose destroy or conceal, any will, codicil, or other testamentary instrument, whether the same shall relate to real or personal estate, or to both: misdemeanor, transportation for seven years, or such other punishment, by

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(*g*) 7 & 8 G. 4, c. 29, s. 23.

fine or imprisonment, or by both, as the court shall award; and it shall not, in any indictment for such offence, be necessary to allege that such will, codicil, or other instrument is the property of any person, or that the same is of any value (*h*).

Commitment:—*On* ——, *at* ——, *a certain will and testamentary instrument of one C. D., unlawfully did steal, take, and carry away: against the form of the statute in such case made and provided. And you the said keeper*, &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 396.

Records and other documents.] If any person shall steal,—or shall for any fraudulent purpose take from its place of deposit or from any person having the lawful custody thereof,—or shall unlawfully and maliciously obliterate, injure, or destroy,—any record, writ, return, panel, process, interrogatory, deposition, affidavit, rule, order, or warrant of attorney, or any original document whatsoever, of or belonging to any court of record, or relating to any matter, civil or criminal, begun, depending, or terminating in any such court, or any bill, answer, interrogatory, deposition, affidavit, order, or decree, or any original document whatsoever of or belonging to any court of equity, or relating to any cause or matter begun, depending, or terminated in any such court: misdemeanor, transportation for seven years, or such other punishment by fine or imprisonment, or by both, as the court shall award; and it shall not in any indictment for such offence be necessary to allege that the article, in respect of which the offence is committed, is the property of any person, or that the same is of any value (*i*).

Commitment:—*On* ——, *at* ——, *a certain* [*judgment roll of Her Majesty's court of Queen's Bench, purporting to be the judgment roll in a certain action wherein A. B. was plaintiff and C. D. defendant*], *in the treasury of the said court there being then deposited* (*the said treasury being the place of deposit of the said judgment roll for the time being*), *unlawfully and maliciously did obliterate and injure: against the form of the statute in such case made and provided. And you the said keeper*, &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 397.

(*h*) 7 & 8 G. 4, c. 29, s. 22. See *R.* v. *Morris*, 9 Car. & P. 89.

(*i*) 7 & 8 G. 4, c. 29, s. 21.

3. *Larceny of Animals.*

Horses, cows, sheep, &c.] If any person shall steal any horse, mare, gelding, colt or filly, or any bull, cow, ox, heifer or calf, or any ram, ewe, sheep or lamb ;—or shall wilfully kill any of such cattle, with intent to steal the carcase or skin or any part of the cattle so killed : felony (*a*), transportation for not more than fifteen years nor less than ten, or imprisonment, with or without hard labour, for not more than three years (*b*). As to the cases decided upon the section, see *Arch. New Cr. Law*, 399. Where the prisoner cut the throat of a sheep, with intent to steal the carcase, but was interrupted before he succeeded in killing it, and it did not die for two days afterwards : the judges held it to be a case within the statute (*c*).

Commitment for stealing :]—*On* ——, *at* ——, *one gelding* [" horse, mare, gelding, colt or filly, bull, cow, ox, heifer or calf, ram, ewe, sheep or lamb"] *of the goods and chattels of* [*the said*] *C. D., feloniously did steal, take, and lead* [or *drive*] *away. And you the said keeper*, &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 398.

Commitment for killing, with intent to steal :]—*On* ——, *at* ——, *one ewe* [" horse, mare, gelding, colt or filly, bull, cow, ox, heifer or calf, ram, ewe, sheep or lamb,"] *of the goods and chattels of* [*the said*] *C. D., wilfully and feloniously did kill, with intent feloniously to steal, take and carry away the carcase*, [or *the skin*, or *a certain part of the carcase, that is to say, the inward fat*] *of the said ewe : against the form of the statute in such case made and provided. And you the said keeper*, &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 401.

(*a*) 7 & 8 G. 4, c. 29, s. 25.
(*b*) 1 Vict. c. 90, ss. 1, 3.
(*c*) *R.* v. *George Sutton*, 8 Car. & P. 291.

Deer, in inclosed grounds.] If any person shall unlawfully and wilfully course, hunt, snare or carry away, or kill or wound, or attempt to kill or wound, any deer, kept or being in the inclosed part of any forest, chase, or purlieu, or in any inclosed land wherein deer shall be usually kept: felony, punishment the same as for simple larceny (*d*).

Commitment:—*On ——, at ——, in certain inclosed land there situate, belonging to* [or, *in the occupation of*] *C. D., wherein deer had been and then were usually kept, one fallow deer, the property of the said C. D., then and there kept and being, then and there in the said inclosed land unlawfully, wilfully and feloniously did course, kill, and carry away: against the form of the statute in such case made and provided. And you the said keeper,* &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 402.

Deer, in uninclosed grounds, second offence.] And if any person shall unlawfully and wilfully course, hunt, snare, or carry away, or kill or wound, or attempt to kill or wound, any deer kept or being in the uninclosed part of any forest, chase, or purlieu; he shall, on conviction thereof before a justice of the peace, forfeit and pay a sum not exceeding fifty pounds;—and if any person previously convicted of any offence relating to deer for which a pecuniary penalty is by this Act imposed, shall offend a second time, by committing any of the offences hereinbefore last enumerated, such second offence, whether it be of the same description as the first offence or not, shall be deemed felony, and such offender shall be liable to be punished, in the same manner as for simple larceny (*e*).

Commitment for a second offence:—*On ——, at ——, in a certain uninclosed part of a certain forest, called ——, there situate, one fallow deer, then and there being, unlawfully and wilfully did course, kill, and carry away* [or as the case may be]: *against the form of the statute in such case made and provided; he the said A. B. having been previously convicted of having coursed, killed, and carried away a certain other deer kept in the uninclosed part of the said forest. And you the said keeper,* &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 403.

(*d*) 7 & 8 G. 4, c. 29, s. 26. See *ante*, p. 235.

(*e*) 7 & 8 G. 4, c. 29, s. 26. See *ante*, p. 235, and see as to a first offence, *ante*, vol. 2, p. 742.

Resisting deer keepers in seizing guns, &c.] And if any person shall enter into any forest, chase, or purlieu, whether inclosed or not, or into any inclosed land where deer shall be usually kept, with intent unlawfully to hunt, course, wound, kill, snare, or carry away any deer, it shall be lawful for every person entrusted with the care of such deer, and for any of his assistants, whether in his presence or not, to demand from every such offender any gun, fire arms, snare, or engine in his possession, and any dog there brought for hunting, coursing or killing deer; and in case such offender shall not immediately deliver up the same, to seize and take the same from him in any of those respective places, or, upon pursuit made, in any other place to which he may have escaped therefrom, for the use of the owner of the deer :—and if any such offenders shall unlawfully beat or wound any person entrusted with the care of the deer, or any of his assistants, in the execution of any of the powers given by this Act: felony, punishment the same as simple larceny (*f*).

Commitment:—*On* ——, *at* ——, *in and upon* [*the said*] *E. F.* (*the said E. F. then being a person entrusted with the care of the deer then and usually kept and being within certain inclosed* [or *uninclosed*] *land there situate, and the said E. F. then and there being in the due execution of his duty as keeper of the said deer, and in execution of the powers given to him in that behalf by a statute passed in the eighth year of the reign of our late sovereign lord King George the Fourth, intituled "An Act for consolidating and amending the laws in England relative to larceny and other offences connected therewith"*), *unlawfully and feloniously did make an assault, and him the said E. F. then and there, and whilst in the execution of the powers aforesaid, unlawfully and feloniously did beat and wound: against the form of the statute in such case made and provided. And you the said keeper*, &c.

Hares or conies in warrens or breeding grounds.] "If any person shall unlawfully and wilfully, in the night-time, take or kill any hare or coney, in any warren or ground lawfully used for the breeding or keeping of hares or conies, whether the same be enclosed or not:" misdemeanor and punishable accordingly (*g*).

Where it appeared that the prosecutor kept rabbits, which ran about loose in his rick-yard, and that they had been destroyed by poison in the night-time: Patteson, J., held that it was not a case within this statute; that the statute applied

(*f*) 7 & 8 G. 4, c. 29, s. 29. See *ante*, p. 235.

(*g*) 7 & 8 G. 4, c. 29, s. 30.

to places commonly called rabbit warrens, and not to places where a few rabbits might be kept (*h*). Catching rabbits, &c., in snares, &c., is deemed a taking within the Act; and therefore, where a man set several wires in a warren for the purpose of catching rabbits, and a rabbit was caught in one of them; the man afterwards came to the warren, and just as he was about to take up the rabbit, the warrener seized him: all the judges but one held, that catching was a taking within the meaning of the statute, and that to constitute this offence it did not require such a taking as to constitute larceny (*i*).

See the form of the commitment, *ante*, p. 181; and see the form of the indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 404.

House doves, or pigeons.] If pigeons are tame and reclaimed, they are the subject of larceny at common law, and a party may be indicted for stealing them, whether they are in a state of confinement or are in an ordinary dovecot, which affords them free access at their pleasure to the open air (*k*).

By 7 & 8 G. 4, c. 29, s. 33, if any person wilfully kill, wound, or take any house dove or pigeon, under such circumstances as shall not amount to larceny at common law, he shall, on summary conviction, forfeit and pay, over and above the value of the bird, any sum not exceeding two pounds (*l*).

Commitment:—*On* ——, *at* ——, *twenty pigeons, the property of C. D., being then tame and reclaimed, unlawfully and feloniously did steal, take, and carry away. And you the said keeper*, &c.

Fish in water adjoining to a dwelling-house.] "If any person shall unlawfully or wilfully take or destroy any fish in any water which shall run through or be in any land, adjoining or belonging to the dwelling-house of any person being the owner of such water, or having a right of fishery therein:" —misdemeanor, and punishable accordingly; provided always, that nothing hereinbefore contained shall extend to any person angling in the day-time (*m*).

As to the penalty for taking of fish elsewhere, or by angling, see *ante*, vol. 2, p. 748.

Commitment for taking fish in water adjoining to a dwelling-house:—*On* ——, *at* ——, *in a certain close adjoining* [or *belonging*] *to the dwelling-house of C. D. there situate, in a certain pond* [or *stream*] *of water there being, whereof*

(*h*) *R.* v. *Garratt et al.*, 6 Car. & P. 369.

(*i*) *R.* v. *Glover*, R. & Ry. 269.

(*k*) *R.* v. *Cheafor*, 21 Law J. 43, m.

(*l*) See *ante*, vol. 2, p. 748.

(*m*) 7 & 8 G. 4, c. 29, s. 34.

the said C. D. was then and there the owner [or *wherein the said C. D. had a right of fishery*], *ten fish, called trout, then and there in the said pond unlawfully and wilfully did take* [or *destroy*]: *against the form of the statute in such case made and provided. And you the said keeper*, &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 410.

Oysters, stealing, or dredging for.] "If any person shall steal any oysters or oyster brood, from any oyster bed, laying, or fishery, being the property of any other person, and sufficiently marked out or known as such:" larceny, and punishable accordingly;—and "if any person shall unlawfully and wilfully use any dredge, or any net, instrument, or engine whatsoever, within the limits of any such oyster fishery, for the purpose of taking oysters or oyster brood, although none shall be actually taken,—or shall with any net, instrument, or engine, drag upon the ground or soil of any such fishery:" misdemeanor, and punishable by fine or imprisonment, or both; such fine not to exceed twenty pounds, and such imprisonment not to exceed three calendar months; and it shall be sufficient in any indictment or information to describe, either by name or otherwise, the bed, laying, or fishery, in which any of the said offences shall have been committed, without stating the same to be in any particular parish, township, or vill: provided always, that nothing herein contained shall prevent any person from catching or fishing for any floating fish within the limits of any oyster fishery with any net, instrument, or engine adapted for taking floating fish only (*n*).

Commitment for stealing oysters:—*On* ——, *at* ——, *from a certain oyster bed, called* ——, *the property of C. D., and sufficiently* [*marked out and*] *known as the property of the said C. D., one hundred oysters, then and there feloniously did steal, take and carry away: against the form of the statute in such case made and provided. And you the said keeper*, &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 411.

Commitment for dredging in the oyster fishery of another: —*On* ——, *at* ——, *within the limits of a certain oyster fishery, called* ——, *the property of C. D., and sufficiently* [*marked out and*] *known as the property of the said C. D.*,

(*n*) 7 & 8 G. 4, c. 29, s. 36.

unlawfully and wilfully did use a certain dredge, for the purpose then and there of taking oysters [and oyster brood]: against the form of the statute in such case made and provided. And you the said keeper, &c.

Commitment for dragging on the ground of another's oyster fishery:—*On* ——, *at* ——, *with a certain net*, [or *with a certain instrument and engine called a* ——,] *unlawfully did drag upon the ground and soil of a certain oyster fishery, called* ——, *the property of C. D., and sufficiently [marked out and] known as the property of the said C. D.: against the form of the statute in such case made and provided. And you the said keeper*, &c.

4. *Larceny of Things, growing on or attached to Land.*

Trees, shrubs, &c.] "If any person shall steal, or shall cut, break, root up, or otherwise destroy or damage with intent to steal, the whole or any part of any tree, sapling or shrub, or any underwood, respectively growing in any park, pleasure ground, garden, orchard, or avenue, or in any ground adjoining or belonging to any dwelling-house:" felony, if the value of the article stolen, or the amount of the injury done, exceed the sum of one pound, and punishable in the same manner as simple larceny;—and "if any person shall steal, or shall cut, break, root up, or otherwise destroy or damage with intent to steal, the whole or any part of any tree, sapling, or shrub, or any underwood respectively growing elsewhere than in any of the situations hereinbefore mentioned:" felony, if the value of the article stolen, or the amount of the injury done, shall exceed five pounds, and punishable in the same manner as simple larceny (*a*).

Commitment for stealing trees, &c. growing in parks or pleasure grounds, &c.:—*On* ——, *at* ——, *in a certain park* ["park, pleasure ground, garden, orchard, or avenue, or in any ground adjoining or belonging to any dwelling-house"] *of C. D. there situate, one oak tree*, ["the whole or any part of any tree, sapling, or shrub, or any underwood,"] *of the*

(*a*) 7 & 8 G. 4, c. 29, s. 38.

value of one pound and upwards, the property of the said C. D., in the said park then and there growing, feloniously did steal, take, and carry away: against the form of the statute in such case made and provided. And you the said keeper, &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 413.

Commitment for cutting or damaging such trees, &c. with intent to steal them :—*On* ——, *at* ——, *in a certain park, &c., of C. D., there situate, ten oak trees, the property of the said C. D., in the said park then and there growing, feloniously did cut* [" cut, break, root up, or otherwise destroy or damage,"] *with intent the same then and there feloniously to steal, take, and carry away; thereby doing injury unto the said C. D. to an amount exceeding the sum of one pound: against the form of the statute in such case made and provided. And you the said keeper*, &c.

Commitment for stealing trees, &c., growing elsewhere :—*On* ——, *at* ——, *in a certain close of C. D., there situate, one oak tree, of the value of five pounds and upwards, the property of C. D., then and there growing, feloniously did steal, take, and carry away: against the form of the statute in such case made and provided. And you the said keeper*, &c.

Commitment for cutting or damaging such trees, &c. with intent to steal them :—*On* ——, *at* ——, *in a certain close of C. D. there situate, ten oak trees, the property of the said C. D., then and there growing, feloniously did cut*, [" cut, break, root up, or otherwise destroy or damage,"] *with intent the same feloniously to steal, take, and carry away; thereby doing injury unto the said C. D. to an amount exceeding the sum of five pounds: against the form of the statute in such case made and provided. And you the said keeper*, &c.

Stealing, &c. trees, shrubs, &c. of the value of 1*s*.] " If any person shall steal, or shall cut, break, root up, or otherwise destroy or damage with intent to steal, the whole or any part of any tree, sapling or shrub, or any underwood, wheresoever the same may be respectively growing, the stealing of such article or articles, or the injury done, being to the amount of a shilling at the least," every such offender, who, being summarily convicted for a first and second offence, " shall afterwards commit any of the said offences; " felony, and punishable in the same manner as simple larceny (*b*).

(*b*) 7 & 8 G. 4, c. 29, s. 39.

Commitment for a third offence of stealing:—*On* ——, *at* ——, *one ash tree, of the value of* 1*s.*, *the property of C. D., then and there growing, feloniously did steal, take and carry away: against the form of the statute in such case made and provided; he the said A. B. having previously been twice convicted of the like offence. And you the said keeper*, &c.

Commitment for a third offence, of cutting or damaging with intent to steal:—*On* ——, *at* ——, *one ash tree* ["the whole or any part of any tree, sapling or shrub, or any underwood"] *the property of C. D., then and there growing, unlawfully and feloniously did cut and damage* ["cut, break, root up, or otherwise destroy or damage"], *with intent the same then and there to steal, take and carry away, thereby doing injury unto the said C. D., to the amount of* 1*s.*: *against the form of the statute in such case made and provided; he the said A. B. having previously been twice convicted of the like offence. And you the said keeper*, &c.

See as to the conviction for the first and second offence, *ante*, vol. 2, p. 750.

Plants, fruits, vegetables, &c. in gardens, &c.] "If any person shall steal, or shall destroy or damage with intent to steal, any plant, root, fruit or vegetable production, growing in any garden, orchard, nursery ground, hothouse, greenhouse, or conservatory:" every such offender, who, after being summarily convicted thereof for a first offence "shall afterwards commit any of the said offences;" felony, and punishable in the same manner as simple larceny (*c*).

Commitment for a second offence of stealing:—*On* ——, *at* ——, *twenty pears, the property of C. D., then growing in a certain orchard of the said C. D., there situate, unlawfully and feloniously did steal, take, and carry away: against the form of the statute in such case made and provided; he the said A. B. having been before convicted of the like offence. And you the said keeper*, &c.

Commitment for a second offence of destroying or damaging:—*On* ——, *at* ——, *six pine-apples, the property of C. D., then growing in a certain hothouse of the said C. D. there situate, feloniously did damage* ["destroy or damage"] *with intent the same then and there to steal, take, and carry away: against the form of the statute in such case made and provided; he the said A. B. having been before convicted of the like offence. And you the said keeper*, &c.

(*c*) 7 & 8 G. 4, c. 29, s. 42.

See as to the conviction for a first offence, *ante*, vol. 2, p. 754.

Metal, glass, wood, &c. fixed to houses or land.] "If any person shall steal—or rip, cut or break with intent to steal—any glass or wood-work belonging to any building whatsoever,—or any lead, iron, copper, brass, or other metal, or any utensil or fixture, whether made of metal or other material, respectively fixed in or to any building whatsoever,—or any thing made of metal fixed in any land being private property, or for a fence to any dwelling-house, garden or area, or in any square, street, or other place dedicated to public use or ornament:" felony, and punishable in the same manner as simple larceny; and in case of any such thing fixed in any square, street, or other like place, it shall not be necessary to allege the same to be the property of any person (*d*).

Commitment for stealing lead, &c. fixed to a building:—*On ——, at ——, fifty pounds weight of lead, the property of C. D., and then and there being fixed to the dwelling-house* ["any building whatsoever"] *of the said C. D., there situate, feloniously did steal, take, and carry away: against the form of the statute in such case made and provided. And you the said keeper*, &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 411.

Commitment for ripping, cutting or breaking it, with intent to steal:—*On ——, at ——, fifty pounds weight of lead, the property of C. D., and then and there being fixed to the dwelling-house of the said C. D., there situate, feloniously did rip, cut and break, with intent the same then and there feloniously to steal, take, and carry away: against the form of the statute in such case made and provided. And you the said keeper*, &c.

Commitment for stealing metal fixed in land which is private property:—*On ——, at ——, one leaden statue, and fifty pounds weight of lead,* ["anything made of metal,"] *the property of C. D., then and there being fixed in certain land, which was then private property, to wit, in a garden of the said C. D., there situate* ["in any land being private property"], *feloniously did steal, take and carry away,* [or *feloniously did rip, cut and break, with intent the same feloniously to steal, take, and carry away:*] *against the form of the statute in such case made and provided. And you the said keeper*, &c.

(*d*) 7 & 8 G. 4, c. 29, s. 44.

Commitment for stealing, &c. metal fixed in a square or street, &c.:—*On* ——, *at* ——, *one iron rail, and ten pounds weight of iron, then and there being fixed in a certain square called Hanover-square, there situate, feloniously did steal, take, and carry away,* [or *feloniously did rip, cut, and break, with intent the same to steal, take, and carry away*]: *against the form of the statute in such case made and provided. And you the said keeper,* &c.

Stealing brass attached to tombstones in a churchyard has been holden to be within this clause of the statute (*e*).

5. *Larceny from Mines.*

Ore of metal, coal, &c.] "If any person shall steal, or sever with intent to steal, the ore of any metal, or any lapis calaminaris, manganese or mundick, or any wad, black cawke, or black lead, or any coal or cannel coal, from any mine, bed, or vein thereof respectively:" felony, punishable in the same manner as simple larceny (*f*).

Commitment:—*On* ——, *at* ——, *twenty pounds weight of copper ore, the property of* [*the said*] *C. D., in a certain mine of copper ore of the said C. D., there situate, then and there being found, from the said mine feloniously did steal, take, and carry away* [or *feloniously did sever, with intent the same then and there feloniously to steal, take, and carry away*:] *against the form of the statute in such case made and provided. And you the said keeper,* &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 415.

6. *Larceny from the Person.*

Robbery.] Robbery is a felonious taking of money or goods from the person of another or in his presence, against his will, by violence and putting him in fear (*g*), and carrying of the same away. It is a larceny from the person, committed either with personal violence to the party, or in such a manner as is calculated to inspire a man of reasonable firmness with fear (*h*). The property must be actually separated from the

(*e*) *R.* v. *Blick*, 4 Car. & P. 377.
(*f*) 7 & 8 G. 4. c. 29, s. 37.
(*g*) 2 East, P. C. 707.
(*h*) See 1 Hawk. c. 34, ss. 8, 9.

person of the party robbed, otherwise the offence will be incomplete (*i*), and will only amount to a simple larceny, or an assault with intent to rob. But a severance for any the shortest time will be sufficient. Where a watch, chain and key were taken from the waistcoat pocket of the prosecutor, but in drawing it away, the key caught upon a button of the waistcoat, and the prisoner's hand being seized at the instant the watch remained there suspended: the appeal court held this to be a sufficient severance to constitute a stealing from the person (*k*). Also, the violence or putting in fear must precede or accompany the stealing; if a man steal from the person of another, and only afterwards use violence or put him in fear, it will not amount to robbery (*l*). But if the offence be once committed, it cannot afterwards be purged by the offender's giving back the property stolen (*m*).

Robbery is felony: and in ordinary cases is punishable with transportation for not more than fifteen years nor less than ten, or imprisonment for not more than three years (*n*). But if the offender, either "at the time of or immediately before or immediately after such robbery, shall stab, cut or wound any person," the punishment is death (*o*); or if he be armed at the time, or in company with one or more other persons, or if at or immediately before or after the robbery he shall beat, strike, or use any personal violence to any person, the punishment is transportation for life or for not less than fifteen years, or imprisonment [with or without hard labour (*p*)] for not more than three years (*q*).

Commitment:—*On ——, at ——, in and upon [the said] C. D. feloniously did make an assault, and him the said C. D. in bodily fear and danger of his life feloniously did put, and ten pieces of the current gold coin of the realm, called sovereigns, and one gold watch, of the monies, goods and chattels of the said C. D., from the person and against the will of the said C. D. feloniously and violently did steal, take, and carry away. And you the said keeper*, &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 417; the like for robbery and wounding, *Id.* 424.

Assault with intent to rob.] Whoever shall assault any person, with intent to rob: felony, imprisonment [with or

(*i*) See *Lapier's case*, 1 Leach, 320. *R.* v. *Thompson*, Ry. & M. 78.

(*k*) *R.* v. *Simpson*, 24 Law J. 7, m.

(*l*) See Arch. New Cr. Law, 418.

(*m*) *R.* v. *Peat*, 2 East, P. C. 557.

(*n*) 1 Vict. c. 87, s. 5.

(*o*) Id. s. 2.

(*p*) Id. s. 10.

(*q*) Id. s. 3.

without hard labour (*q*)], for not more than three years (*r*). But if the offender were armed at the time, or in company with one or more other persons, the punishment is transportation for life, or for not less than fifteen years, or imprisonment [with or without hard labour (*s*)], for not more than three years (*t*). This is the same offence as robbery, except that the offender has not succeeded in obtaining any property by his violence. But where a man, under a feasible claim of right assaulted another for the purpose of getting certain money from him: it was holden that he could not be convicted upon this statute, but that he might be convicted as for an assault, under stat. 1 Vict. c. 85, s. 11 (*u*).

Commitment:—*On* ——, *at* ——, *in and upon* [*the said*] *C.D., feloniously did make an assault, with intent then and there the monies, goods and chattels of the said C. D., from the person and against the will of the said C. D., feloniously and violently to steal, take and carry away: against the form of the statute in such case made and provided. And you the said keeper*, &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 425.

Stealing from the person.] Whosoever shall steal any property from the person of another: transportation for not more than fifteen years, nor less than ten, or imprisonment [with or without hard labour (*x*)], for not more than three years (*y*). The property must be actually separated from the person; a mere removal, although sufficient to constitute simple larceny, is not so in this offence, unless the property be actually separated (*z*).

Commitment:—*On* ——, *at* ——, *ten pieces of the current gold coin of the realm, called sovereigns, and one silver watch, of the monies, goods and chattels of* [*the said*] *C. D., from the person of the said C. D., feloniously did steal, take and carry away: against the form of the statute in such case made and provided. And you the said keeper*, &c.

See the form of an indictment for this offence and the evidence necessary to support it, *Arch. New Cr. Law*, 431.

Demanding money with menaces, &c.] "Whosoever shall, with menaces or by force, demand any property of any person

(*q*) 1 Vict. c. 87, s. 10.
(*r*) Id. s. 6.
(*s*) Id. s. 10.
(*t*) Id. s. 3. See *R.* v. *Mitchell et al.*, 21 Law J. 135, m.
(*u*) *R.* v. *Boden*, Car. & K. 395.
(*x*) 1 Vict. c. 87, s. 10.
(*y*) Id. s. 5.
(*z*) *R.* v. *Thompson*, Ry. & M. 78. And see *R.* v. *Simpson*, *ante*, p. 253.

with intent to steal the same:" felony, imprisonment [with or without hard labour (*a*)], for not more than three years (*b*). As to the offence of obtaining money, &c. by accusing or threatening to accuse a man of unnatural practices, see *ante*, p. 9, tit. "*Accusing of Crime.*"

Commitment:—*On* ——, *at* ——, *did with menaces*, [or *by force*] *feloniously demand of and from* [*the said*] *C. D. the money* ["chattel, money or valuable security," or if the demand were of a specific chattel or valuable security, it may be stated thus: *a certain chattel, to wit* ——, or *a certain valuable security, to wit*, ——, stating the nature of it shortly,] *of him the said C. D., with intent the said money* [*chattel*, or *valuable security*], *from the said C. D., then and there feloniously to steal, take, and carry away: against the form of the statute in such case made and provided. And you the said keeper*, &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 427.

Using chloroform, for the purpose of committing a felony.] If any person shall unlawfully apply or administer, or attempt to apply or administer, to any other person any chloroform, laudanum, or other stupifying or overpowering drug, matter, or thing, with intent thereby to enable such offender or any other person to commit, or with intent to assist such offender or other person in committing, any felony: felony, transportation for life or for not less than seven years, or imprisonment with or without hard labour, for any term not more than three years (*c*).

Commitment:—*On* ——, *at* ——, *unlawfully and feloniously did apply certain chloroform to C. D., with intent thereby to enable him the said A. B.* [or *one E. F.*] *to commit a felony: against the form of the statute in such case made and provided. And you the said keeper*, &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 432.

(*a*) 7 & 8 G. 4, c. 29, s. 10.
(*b*) 1 Vict. c. 87, s. 7. See *R.* v. *Edwards et al.*, 6 Car. & P. 515, 521.
(*c*) 14 & 15 Vict. c. 19, s. 3.

7. *Larceny from the House.*

As to breaking and entering churches or chapels, and stealing therein, or stealing in such churches or chapels and afterwards breaking out of the same, see tit. "*Burglary*," *ante*, p. 60. As to breaking and entering a dwelling-house, and stealing therein, see *ante*, p. 60. And as to breaking and entering shops, warehouses or counting-houses, see *ante*, p. 62.

Stealing in a dwelling-house, to value of 5l.] If any person shall steal in any dwelling-house any chattel, money or valuable security to the value in the whole of five pounds or more: felony (*a*); transportation for not more than fifteen, nor less than ten years, or imprisonment with or without hard labour, for not more than three years (*b*).

But no building, although within the same curtilage with the dwelling-house, and occupied therewith, shall be deemed to be part of such dwelling-house for the purpose of stealing from the dwelling-house, unless there shall be a communication between such building and dwelling-house, either immediate, or by means of a covered and inclosed passage leading from one to the other (*c*).

Commitment:—*On* ——, *at* ——, *one silver tea-pot, of the value of five pounds, and six silver tea-spoons of the value of two pounds, of the goods and chattels of* [*the said*] *C. D., in the dwelling-house of the said C. D., there situate, then being, then and there in the said dwelling-house feloniously did steal, take and carry away. And you the said keeper*, &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 433.

Stealing in a dwelling-house, a person therein being put in fear.] "Whoever shall steal any property in any dwelling-house, and shall by any menace or threat put any one being therein in bodily fear:" felony, transportation for not more than fifteen, nor less than ten years, or imprisonment [with or without hard labour (*d*)], for not more than three years (*e*).

(*a*) 7 & 8 G. 4, c. 29, s. 12.
(*b*) 1 Vict. c. 90, ss. 1, 3.
(*c*) 7 & 8 G. 4, c. 29, s. 13. See Arch. New Cr. Law, 434.
(*d*) 1 Vict. c. 86, s. 7.
(*e*) Id. s. 5.

Commitment:—*On* ——, *at* ——, *one silver pint pot, and nine pewter dishes, of the goods and chattels of C. D., in the dwelling-house of the said C. D. there situate, then and there feloniously did steal, take, and carry away; and at the time of the committing of the said felony, in the said dwelling-house, he the said A. B. by menaces and threats did then and there put one S. W., in the said dwelling-house then being, in bodily fear: against the form of the statute in such case made and provided. And you the said keeper*, &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 435.

8. *Larceny from Manufactories.*

Goods in process of manufacture.] If any person shall steal to the value of ten shillings, any goods, or article of silk, woollen, linen, or cotton, or of any one or more of those materials mixed with each other, or mixed with any other material, whilst laid, placed, or exposed, during any stage, process, or progress of manufacture, in any building, field, or other place: felony (*e*), transportation for fifteen years, or not less than ten years, or imprisonment [with or without hard labour] for not more than three years (*f*).

Commitment:—*On* ——, *at* ——, *thirty yards of linen cloth* ["any goods or article of silk, woollen, linen, cotton, or of any one or more of those materials mixed with each other, or mixed with any other material"] *of the value of ten shillings and upwards, of the goods and chattels of* [*the said C. D. in a certain mill and building,* ["building, field, or other place,"] *of the said C. D. there situate, then and there being, then and there in the said mill and building, feloniously did steal, take and carry away, whilst the same were laid, placed and exposed in the said mill and building, during a certain stage, process, and progress of manufacture. And you the said keeper*, &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 436.

9. *Larceny from Ships, Wharfs, &c.*

From ships, docks, wharfs, &c.] If any person shall steal any goods or merchandize in any vessel, barge or boat of any

(*e*) 7 & 8 G. 4, c. 29, s. 16.
(*f*) 1 Vict. c. 90, ss. 2, 3.

description whatsoever, in any port of entry or discharge, or upon any navigable river or canal, or in any creek belonging to or communicating with any such port, river or canal,—or shall steal any goods or merchandize from any dock, wharf, or quay adjacent to any such port, river, canal, or creek: felony (*g*), transportation for not more than fifteen years nor less than ten, or imprisonment with or without hard labour for not more than three years (*h*). It has been decided, however, that a man cannot be guilty of this offence in his own ship (*i*). But the luggage of a passenger in a steam boat, comes within the meaning of the words "goods and merchandize" in the above section (*k*).

Commitment for stealing from ships, &c. in ports or navigable rivers:—*On ——, at ——, twenty-eight pounds weight of indigo, of the goods, wares and merchandizes of* [*the said*] *C. D., in a certain ship* ["vessel, barge, or boat of any description whatsoever,"] *called the Rattler, upon a certain navigable river called the Thames, then and there being, then and there in the said ship, did steal, take, and carry away. And you the said keeper*, &c.

Commitment for stealing from docks, wharfs, or quays:—*On ——, at ——, twenty-eight pounds weight of indigo, of the goods, wares and merchandizes of* [*the said*] *C. D., in and upon a certain wharf there situate, and adjacent to a certain navigable river called the Thames* ["dock, wharf, or quay adjacent to any port of entry and discharge, or to any navigable river or canal, or to any creek belonging to or communicating with any such port, river or canal"], *then and there being, then and there from the said wharf feloniously did steal, take and carry away. And you the said keeper*, &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 439.

From a ship in distress or wrecked.] If any person shall plunder or steal any part of any ship or vessel which shall be in distress, or wrecked, stranded, or cast on shore,—or any goods, merchandize, or articles, of any kind belonging to such ship or vessel: felony, death:—provided always, that when articles of small value shall be stranded or cast on shore, and shall be stolen without circumstances of cruelty, outrage, or violence, it shall be lawful to prosecute and punish the offender as for simple larceny; and in either case the offender may be indicted and tried either in the county in which the offence shall have been committed, or in any county next adjoining (*l*).

(*g*) 7 & 8 G. 4, c. 29, s. 17.
(*h*) 1 Vict. c. 90, ss. 2, 3.
(*i*) *R.* v. *Maddox*, R. & Ry. 92.
(*k*) *R.* v. *Wright*, 7 Car. & P. 159.
(*l*) 7 & 8 G. 4, c. 29, s. 18.

Commitment:—*On* ——, *at* ——, [*twenty pieces of oak plank, being parts of,* or *twenty pounds weight of indigo, belonging to*] *a certain ship and vessel then and there stranded and cast on shore,* [" in distress, or wrecked, stranded or cast on shore,"] *the property of a person or persons unknown, feloniously did plunder, steal, take and carry away: against the form of the statute in such case made and provided. And you the said keeper,* &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law,* 440.

10. *Larceny by Clerks, Tenants, &c.*

By clerks or servants.] " If any clerk or servant shall steal any chattel, money, or valuable security, belonging to or in the possession or power of his master:" transportation for not more than fourteen years nor less than seven, or imprisonment (with or without hard labour), for not more than three years, and if a male, to be once, twice, or thrice publicly or privately whipped (if the court shall so think fit), in addition to such imprisonment (*m*). As to who is a clerk or servant, within the meaning of the statute, see the title "*Embezzlement,*" *ante,* p. 107; and see *R.* v. *Smith,* 1 Car. & K. 423. *R.* v. *Hayward,* Id. 518. *R.* v. *Watts,* 19 Law J. 192, m.

Commitment:—*On* ——, *at* ——, *being then clerk* [or *servant*] *to C. D., ten pieces of the current gold coin of the realm, called sovereigns, one woollen cloth coat, and one linen shirt, of the monies, goods and chattels of and belonging to the said C. D., his master, feloniously did steal, take, and carry away: against the form of the statute in such case made and provided. And you the said keeper,* &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law,* 444.

By tenants or lodgers.] " If any person shall steal any chattel or fixture, let to be used by him or her in or with any house or lodging, whether the contract shall have been entered into by him or her, or by her husband, or by any person on behalf of him or her, or her husband:" felony, and punishable in the same manner as simple larceny; and in every such

(*m*) 7 & 8 G. 4, c. 29, ss. 46, 4.

case of stealing any chattel, it shall be lawful to prefer an indictment in the common form as for larceny, and in every such case of stealing any fixture, to prefer an indictment in the same form as if the offender were not a tenant or lodger, and in either case to lay the property in the owner or person letting to hire (*n*).

The commitment may be the same as that for simple larceny, *ante*, p. 235.

11. *Principals and Accessories.*

In the case of every felony punishable under this Act, every principal in the second degree, and every accessory before the fact, shall be punishable in the same manner as the principal in the first degree; and every accessory after the fact, to any felony punishable under this Act (except only a receiver of stolen property), shall on conviction be liable to be imprisoned for not more than two years; and every person who shall aid, abet, counsel, or procure the commission of any misdemeanor punishable under this Act, shall be liable to be indicted and punished as a principal offender (*o*). A principal in the second degree in the larceny, cannot be convicted as a receiver, although he receive the article stolen from the person who actually stole it (*p*).

LETTER, THREATENING.

Letter, threatening to murder, or to burn or destroy property.] "If any person shall knowingly send or deliver, or utter to any other person, any letter or writing, threatening to kill or murder any other person, or to burn or destroy any house, barn, or other building, or any rick or stack of grain, hay or straw, or other agricultural produce,"—or shall knowingly procure, counsel, aid or abet the commission of the said offence;—felony, transportation for life, or not less than seven years, or imprisonment, with or without hard labour, for not

(*n*) 7 & 8 G 4, c. 29, s. 45.
(*o*) Id. s. 61. See *R.* v. *Manning & Smith*, 22 Law J. 21, m.
(*p*) *R.* v. *Perkins*, 21 Law J. 152, m.

more than four years, and, if a male, to be once, twice, or thrice publicly or privately whipped (if the court shall so think fit), in addition to such imprisonment (*a*).

It is not necessary that the letter should contain an express threat: if the threat can fairly be implied from it, it will be within the meaning of the statute (*b*). It must be proved that the prisoner sent or delivered the letter; even his confession of having written it, has been deemed insufficient (*c*). But evidence of the letter being in his handwriting, coupled with other circumstances, may be sufficient to raise a presumption of his having sent or delivered it. Proof that he dropped a letter, directed to the prosecutor, into the prosecutor's premises where it was likely to be found either by the prosecutor himself, or some person who would deliver it to him, was holden by the judges to be a sending of the letter (*d*). So, proof that he sent it to another person, with intent that such person should send or deliver it to the prosecutor, will support the allegation that he sent it to the prosecutor (*e*).

Commitment:—*On* ——, *at* ——, *knowingly and feloniously did send* ["send or deliver"] *to the said C. D., a certain letter, directed to the said C. D., threatening to kill and murder him the said C. D.* [or as the case may be]: *against the form of the statute in such case made and provided. And you the said keeper,* &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 533.

Letter, threatening to accuse of crime.] "If any person shall knowingly send or deliver or utter to any other person, any letter or writing accusing or threatening to accuse either the person to whom such letter or writing shall be sent or delivered, or any other person, of any crime punishable by law with death or transportation,"—"with a view or intent to extort or gain, by means of such threatening letter or writing, any property, money, security or other valuable thing, from any person whatever:"—felony, transportation for life, or for any term not less than seven years, or imprisonment, with or without hard labour, for not more than four years, and, if a male, to be once, twice or thrice publicly or privately whipped (if the court shall think fit), in addition to such imprisonment (*f*).

(*a*) 10 & 11 Vict. c. 66, s. 1.
(*b*) See *R.* v. *Boucher*, 4 Car & P. 563.
(*c*) *R.* v. *Howe*, 7 Car. & P. 268.
(*d*) *R.* v. *Wagstaff*, R. & Ry. 398.
(*e*) By the judges in *R.* v. *Paddle*, R. & Ry. 484.
(*f*) 10 & 11 Vict. c. 66, s. 1.

Commitment:—*On* ——, *at* ——, *knowingly and feloniously did send to one C. D. a certain letter, directed to the said C. D., threatening to accuse him the said C. D. of a certain crime punishable by law with transportation, to wit,* ——, *with a view and intent, by means of the said threatening letter, to extort and gain certain money from the said C. D.: against the form of the statute in such case made and provided. And you the said keeper,* &c.

See a form of the indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 323.

Letter, demanding money, &c., with menaces.] "If any person shall knowingly send or deliver any letter or writing, demanding of any person, with menaces, and without any reasonable or probable cause, any chattel, money or valuable security:" felony, transportation for life or not less than seven years, or imprisonment with or without hard labour for not more than four years, and, if a male, to be once, twice or thrice publicly or privately whipped (if the court shall think fit), in addition to such imprisonment (*g*).

The demand must be of a thing, to which the writer has no reasonable or feasible pretence of right; a letter demanding, with menaces, the payment of a debt *bonâ fide* supposed to exist, or of a sum in controversy between the parties, does not, it should seem, come within the statute (*h*). Where the letter stated that the writer had overheard persons planning an injury to the person or the property of the prosecutor, and that if 30*l.* were left for him at a certain place, he would give him such information as would prevent the injury, and enable him to secure the offenders: the judges held that this was not a threatening letter within the meaning of the statute (*i*). But the authority of this latter case has been much shaken by a recent case before the Criminal Appeal Court, which was thus: upon an indictment on this section of the statute, it appeared that the prisoner wrote a letter to the prosecutors, who were bankers, in which, after alluding to some former terms proposed by him, and to a "horrid catastrophe," which would not only stop their bank, perhaps for ever, as the books would all be destroyed, as contemplated by the crackman or captain of "this horrid gang," he proceeded to point out a place where the bankers where to deposit a bag containing two hundred and fifty sovereigns, and concluded thus: "Let the money be lodged to-morrow (Saturday) morning by half-past eleven o'clock, but not one moment sooner, and all shall be well with

(*g*) 7 & 8 G. 4, c. 29, s. 8. See stat. 1 Vict. c. 87, s. 7, *ante*, p. 255.
(*h*) See *R.* v. *Hemming*, 2 East, P. C. 1116.
(*i*) *R.* v. *Pickford*, 4 Car. & P. 227.

you, but if I am at all deceived in any possible way, all must fall upon yourselves:" the judges held this clearly to be a letter within the meaning of the Act; they were all of opinion that a letter asking money, and using expressions calculated to make the other person part with it against his will, under the impression that mischief will happen if the application for the money be not complied with, is just that sort of demand which the statute contemplated (*k*). As to the sending or delivery of the letter, see the cases under the last head, p. 261.

Commitment:—*On* ——, *at* ——, *knowingly and feloniously did send* ["send or deliver"] *to the said C. D., a certain letter, directed to him the said C. D., demanding money* [or as the case may be] *of and from the said C. D., with menaces, and without reasonable or probable cause: against the form of the statute in such case made and provided. And you the said keeper*, &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 428.

As to threatening to accuse a man of crime, with intent to extort money, &c., see *ante*, p. 10.

And as to publishing or threatening to publish a libel, with intent to extort money, &c., see *ante*, p. 11.

LEWDNESS.

See "Indecency."

LIBEL.

Seditious libels, 264.
Blasphemous libels, 265.
Libels reflecting on the public administration of justice, 266.
Libels on individuals, 266.

A libel is a malicious reflection, in writing, printing, or by signs, effigies, or the like, upon the character or conduct of individuals, or bodies of persons, or on public institutions (*a*). To be punishable, however, it must be proved to have been published, either openly to the world, as in books or newspapers, &c., or singing it in the streets (*b*), or the like, or to individuals, as in letters, &c., or by letter directed to and received

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(*k*) *R.* v. *Thomas Smith*, 2 C. & K. 882; 19 Law J. 80, m.

(*a*) See *R.* v. *Benfield*, 2 Burr. 985.

(*b*) Id.

by the individual libelled (*c*). And evidence of buying a libel at the shop of a known bookseller or newsvender, will be sufficient proof a publication of it by him, although he be not present at the time of the sale (*d*). If published, not only the publication, but the composing, writing, or printing of it, is punishable by indictment; and on the other hand, it seems not to be an indictable offence merely to write a libel, if it be not afterwards published (*e*). In the case of newspapers and pamphlets, the publishers must give bonds to the stamp office, with sureties, conditioned to secure the payment of fines upon convictions for libel (*f*).

The malicious intention may be inferred from the nature of the libel and the fact of publication; for a person who publishes that which is calumnious of the character of another, must be presumed to have intended that which the publication necessarily and obviously is calculated to effect; and the onus of proving the contrary lies upon him (*g*). And it will be no excuse, that it is a faithful report of the proceedings in a court of justice, if it contain matter of a scandalous, blasphemous, or immoral tendency (*h*). Nor is it matter of excuse, that the libel has been borrowed from another publication (*i*); or that it has been published by an order of the House of Commons (*k*). And a member of parliament who publishes a speech, said to have been spoken by him in parliament, is punishable for it, if it be a libel, in the same manner as other persons (*l*). But assigning reasons in the books of a Quaker's meeting, for the expulsion of one of their members, has been holden not to be a libel (*m*). So, an advertisement in a newspaper, though conveying an imputation injurious to the character of a person, has been holden not to be a libel, where it appeared to have been done *bonâ fide* for the purpose of obtaining information on a subject, by a person really interested in the discovery (*n*).

Libels may be classed under four heads: seditious libels, blasphemous libels, libels reflecting on the public administration of justice, and libels on individuals. And in this order we shall now consider them.

Seditious libels.] Every writing against the Queen or her government, which passes the bounds of fair and free discus-

(*c*) *Phillips* v. *Jansem*, 2 Esp. 24.

(*d*) *R.* v. *Almon*, 5 Burr. 2686. *R.* v. *Walter*, 3 Esp. 21. *R.* v. *Alexander*, Moody & M. 437.

(*e*) *R.* v. *Burdett*, 3 B. & A. 717; 4 Id. 95.

(*f*) 11 G. 4 & 1 W. 4, c. 73, s. 2. 60 G. 3, c. 9.

(*g*) *R.* v. *Harvey*, 2 B. & C. 257.

(*h*) *R.* v. *Carlisle*, 3 B. & A. 161. And see *R.* v. *Fleet*, 1 B. & A. 379. *R.* v. *Lee*, 5 Esp. 123. *R.* v. *Fisher*, 2 Camp. 563.

(*i*) *R.* v. *Holt*, 5 T. R. 436.

(*k*) *Stockdale* v. *Hansard*, 9 Ad. & El. 1.

(*l*) *R.* v. *Creevey*, 1 M. & S. 273. *R.* v. *Ld. Abingdon*, 1 Esp. 226.

(*m*) *R.* v. *Hart*, 1 W. Bl. 386.

(*n*) *Delany* v. *Jones*, 4 Esp. 191.

sion, and does not amount to an overt act of treason, may be deemed a seditious libel; and if punished, the writer, printer, and publisher are liable, upon indictment, to fine, or imprisonment or both. Writings which incite to, or justify rebellion, or otherwise import a compassing of the Queen's death, are overt acts of treason, if they be published (*o*). On the other hand, the people of this country have a right freely to discuss the public acts of the Queen and her government, provided they do it fairly and temperately, without imputing bad or improper motives, or attempting to bring either the Queen or her government into contempt or hatred (*p*). And all writings, with relation to the Queen or her government, which cannot be thus justified, but which do not amount to an overt act of high treason,—and all political writings intended to inflame the people, and to incite them to tumult or disorder (*q*), or which have a tendency to cause unlawful meetings and disturbances (*r*),—may, if published, be deemed seditious libels.

Commitment:—*On ——, at ——, wickedly, maliciously, and seditiously did write and publish a certain false, wicked, malicious, scandalous, and seditious libel of and concerning our sovereign lady Queen Victoria, and her government. And you the said keeper*, &c.

After conviction the court may order that all copies of the libel which may be in the possession of the party, or of any other person to his use, shall be seized (*s*).

Blasphemous libels.] Writings against the Christian religion, against the divinity of Christ, or the existence of God, if published, amount to a misdemeanor at common law, and subject the writer, printer, and publisher to fine or imprisonment, or both (*t*).

Commitment: — *On ——, at ——, unlawfully and wickedly did compose, print, and publish a certain scandalous, impious, blasphemous, and profane libel, of and concerning the Holy Scriptures and the Christian religion* [or as the case may be]. *And you the said keeper*, &c.

After conviction, the court may order the seizure of all copies of the libel in the possession of the party, or of any person for him (*u*).

(*o*) *Twyn's case*, Kel. 22; 2 St. Tr. 528. Fort. 205. 3 Inst. 5.

(*p*) See *R.* v. *Lambert*, 2 Camp. 398.

(*q*) *R.* v. *Collins*, 9 Car. & P. 456.

(*r*) *R.* v. *Lovett*, Id. 462.

(*s*) 60 G. 3 & 1 G. 4, c. 8, s. 1.

(*t*) *R.* v. *Daniel Isaac Eaton*, MS. March, 1812. *R.* v. *Taylor*, 3 Keb. 607, 621. *R.* v. *Woolstan*, 2 Str. 834. *R.* v. *Waddington*, 1 B. & C. 26. *R.* v. *Carlisle*, 3 B. & A. 161; and see *ante*, p. 52.

(*u*) 60 G. 3 & 1 G. 4, c. 8, s. 1.

Libels reflecting on the public administration of justice.] Writings, reflecting upon the public administration of justice, calculated to lower it in the estimation of the public, are, if published, misdemeanors at common law, and punishable upon indictment with fine, or imprisonment, or both. And the court of King's Bench have granted a criminal information, for a libel, reflecting on a judge and jury, for having acquitted a prisoner (*x*). Also, where a plaintiff had recovered large damages against an officer of a corporation, for having indicted him for perjury, and the corporation thereupon entered in their books a resolution that the officer, in preferring the indictment, was actuated by motives of public justice, &c.: the court held this entry to be a libel reflecting on the administration of justice, and granted a criminal information against the parties concerned in it (*y*).

Commitment:—*On ——, at ——, wickedly and maliciously did write and publish a certain false, wicked, malicious, and scandalous libel, of and concerning a certain cause between C. D. and E. F., tried at the last assizes for the county of ——, and of and concerning the jury who tried the said cause, and of and concerning the judge before whom the said cause was tried. And you the said keeper*, &c.

Libels on individuals.] Writings against individuals, or against any body of persons, such for instance as the clergy of a diocese (*z*), or the like, accusing them of any offence punishable by law, or imputing to them conduct calculated to degrade them in the eyes of mankind, or expose them to public hatred, contempt, or ridicule, are deemed libels; and as they tend to provoke a breach of the peace, they are, if published, punishable as misdemeanors, with fine, or imprisonment, or both (*a*); and this, whether the accusation be expressed in direct terms, or by way of implication, or ironically, or the like (*b*). So, publishing libellous matter, reflecting upon the conduct of a person deceased, is in like manner punishable, if it be such as is calculated to incite his surviving relations to a breach of the peace, or expose them to the hatred of the people or their neighbours (*c*). So, publications tending to degrade and defame persons in considerable stations of power or dignity in foreign countries, may be treated as libels, on the ground that they may tend to involve this country in disputes and war (*d*).

(*x*) *R.* v. *White*, 1 Camp. 359, n.
(*y*) *R.* v. *Watson*, 2 T. R. 199.
(*z*) *R.* v. *Williams*, 5 B. & A. 595.
(*a*) 1 Hawk. c. 73, s. 1, *et seq.*
(*b*) Id. s. 4. And see *R.* v. *Kinnersley*, 1 W. Bl. 294. *R.* v. *Benfield*, 2 Burr. 985.
(*c*) See *R.* v. *Topham*, 4 T. R. 126.
(*d*) *R.* v. *Lord Gordon*, 1 Russ. 233.

By a recent statute, 6 & 7 Vict. c. 96, s. 4, if any person maliciously publish a defamatory libel, knowing the same to be false: imprisonment for not more than two years, and fine. And if any person maliciously publish any defamatory libel: fine or imprisonment or both, the imprisonment not to exceed one year (*a*). Also, if any person shall publish, or threaten to publish any libel upon any other person, or shall directly or indirectly propose to abstain from printing or publishing, or shall directly or indirectly offer to prevent the printing or publishing, of any matter or thing touching any other person;—with intent to extort any money or security for money, or any valuable thing from such or any other person, or with intent to induce any person to confer or procure for any person any appointment or office of profit or trust:—imprisonment, with or without hard labour, for not more than three years (*b*).

And by the same statute, sect. 6, it is enacted, that on the trial of any indictment or information for a defamatory libel, the defendant having pleaded such plea as hereinafter mentioned, the truth of the matters charged may be inquired into, but shall not amount to a defence, unless it was for the public benefit that the said matters charged should be published;—and that to entitle the defendant to give evidence of the truth of such matters charged as a defence to such indictment or information, it shall be necessary for the defendant, in pleading to the said indictment or information, to allege the truth of the said matters charged in the manner now required in pleading a justification to an action for defamation, and further to allege that it was for the public benefit that the said matters charged should be published, and the particular fact or facts by reason whereof it was for the public benefit that the said matters charged should be published;—to which plea the prosecutor shall be at liberty to reply generally, denying the whole thereof; and if after such plea, the defendant shall be convicted on such indictment or information, it shall be competent to the court, in pronouncing sentence, to consider whether the guilt of the defendant is aggravated or mitigated by the said plea, and by the evidence given to prove or to disprove the same:—provided always, that the truth of the matters charged in the alleged libel complained of by such indictment or information, shall in no case be inquired into without such plea of justification: provided also, that in addition to such plea it shall be competent to the defendant to plead a plea of not guilty: provided also, that nothing in this Act contained shall take away or prejudice any defence

(*a*) 6 & 7 Vict. c. 96, s. 5.

(*b*) 6 & 7 Vict. c. 96, s. 3.

under the plea of not guilty, which it is now competent to the defendant to make under such plea to any action or indictment or information for defamatory words or libel (*c*).

And whensoever, upon the trial of any indictment or information for the publication of a libel, under the plea of not guilty, evidence shall have been given, which shall establish a presumptive case of publication against the defendant by the act of any other person by his authority, it shall be competent to such defendant to prove that such publication was made without his authority, consent, or knowledge, and that the said publication did not arise from want of due care or caution on his part (*d*).

And in the case of any indictment or information, by a private prosecutor, for the publication of any defamatory libel, if judgment shall be given for the defendant, he shall be entitled to recover from the prosecutor the costs sustained by the said defendant by reason of such indictment or information; and that upon a special plea of justification to such indictment or information, if the issue be found for the prosecutor, he shall be entitled to recover from the defendant the costs sustained by the prosecutor by reason of such plea, such costs so to be recovered by the defendant or prosecutor respectively, to be taxed by the proper officer of the court before which the said indictment or information is tried (*e*).

Commitment:—*On* ——, *at* ——, *unlawfully, wickedly, and maliciously did publish a certain false, scandalous, and malicious libel, containing divers false, scandalous, and malicious matters and things of and concerning the said C. D.,* [*he the said A. B. then and there well knowing the same to be false*]. *And you the said keeper,* &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 316.

LODGERS.

See "Larceny."

LOOM.

See "Malicious Injuries."

(*c*) 6 & 7 Vict. c. 96, s. 6.
(*d*) Id. s. 7.
(*e*) 6 & 7 Vict. c. 96, s. 8.

LUNATICS.

In what cases and how dispunishable for crime.] Idiots are persons who have been permanently of nonsane memory from their birth; lunatics, persons who labour at times under temporary insanity, with lucid intervals; and there are others who, born sane, have become permanently insane from disease or other cause: and where in any of these cases, the degree of insanity is such, that the party knows not whether he is doing right or wrong, he is not punishable for any offence he may commit whilst in that state (*a*). Even if a man of sound memory commit a capital offence, and before arraignment he becomes insane, he ought not to be arraigned for it, because he is not able to plead to it with that advice and caution that he ought; if after he is tried and found guilty, he become insane before judgment, judgment shall not be pronounced; and if after judgment he become insane, judgment shall be stayed (*b*).

By stat. 39 & 40 G. 3, c. 94, s. 1, where it shall be given in evidence, upon the trial of any person for treason, murder, or felony [or any misdemeanor (*c*)], that such person was insane at the time of the commission of such offence, and such person shall be acquitted, the jury shall be required to find specially whether such person was insane at the time of committing such offence, and to declare whether they acquitted him on account of such insanity; and if they do so find, the court shall order such person to be kept in strict custody, in such place and in such manner as to them shall seem fit, until His Majesty's pleasure shall be known. But the grand jury have no right to ignore a bill, because it is proved to them that the party was insane at the time he committed the offence; they must find the bill as if the offender had been sane, and leave the court and petty jurors to deal with the case, in the manner here provided (*d*).

(*a*) *R.* v. *Higginson*, 1 Car. & K. 129. *M'Naughten's case*, where the opinions of the judges were taken in the House of Lords, 1 Car. & K. 130, n. *R.* v. *Arnold*, per Tracy, J., 16 How. St. Tr. 764. *Lord Ferrer's case*, 19 How. St. Tr. 947, 948. *R.* v. *Offord*, 5 Car. & P. 168. *R.* v. *Oxford*, 9 Car. & P. 525.

(*b*) 1 Hale, 34; 4 Bl. Com. 24.

(*c*) 3 & 4 Vict. c. 54, s. 3.

(*d*) *R.* v. *Hodges*, 8 Car. & P. 195.

And by sect. 2, where a person indicted for any offence shall be insane, and upon indictment shall be found by a jury impanelled for that purpose to be insane, so that he cannot be tried,—or where upon the trial he shall be found to be insane,—the court may record such finding, and order the party to be kept in strict custody until His Majesty's pleasure shall be known. This section applies to all cases, as well misdemeanors as felonies (*e*).

Also, if any person charged with any offence shall be brought before any court to be discharged for want of prosecution, and such person shall appear to be insane, the court may order a jury to be impanelled to try the sanity of such person; and if the jury find him to be insane, the court may order him to be kept in strict custody, in such place and in such manner as to them shall seem fit, until His Majesty's pleasure shall be known (*f*).

Provision is made by stat. 3 & 4 Vict. c. 54, ss. 1, 2, for sending such lunatics to a lunatic asylum, and for their maintenance there, at the expense of the parish which is the last place of their legal settlement, if they have no property applicable to the purpose; or if they have no settlement, the expense of their maintenance shall be paid by the treasurer of the county, borough, &c., where they are imprisoned (*g*).

It may be necessary to mention that drunkenness is no excuse for crime, but rather an aggravation of it (*h*), unless indeed it can be proved, to the satisfaction of the jury, that the defendant was at the time in such a state of mind, as not to be aware of the consequences of his actions (*i*).

Medical men signing false certificates of lunacy.] By stat. 16 & 17 Vict. c. 97, after making provision for the manner in which medical men shall sign certificates of lunacy before a lunatic is sent to an asylum, it is enacted by sect. 122, that any physician, surgeon, or apothecary, who shall sign any certificate contrary to any of the provisions herein contained, shall for every such offence forfeit any sum not exceeding twenty pounds;—and any physician, surgeon, or apothecary, who shall falsely state or certify anything in any certificate under this Act,—and any person who shall sign any certificate under this Act, in which he shall be described as a physician, surgeon, or apothecary, not being a physician, surgeon, or apothecary respectively within the meaning of this Act,—shall be guilty of a misdemeanor (*k*).

(*e*) *R.* v. *Little*, R. & Ry. 430.
(*f*) 39 & 40 G. 3, c. 94, s. 2.
(*g*) See Arch. Paup. Lun. 94, &c.
(*h*) Co. Lit. 247.
(*i*) *R.* v. *Monkhouse*, 14 Shaw's J. P. 115.
(*k*) 16 & 17 Vict. c. 97, s. 122.

Commitment for the misdemeanor:—*On ——, at ——, being then a surgeon, did in a certain certificate signed by him falsely state ——: against the form of the statute in such case made and provided. And you the said keeper*, &c.

Officers in public asylums ill-treating lunatics.] By stat. 16 & 17 Vict. c. 97, s. 123, if any superintendent, officer, nurse, attendant, servant, or other person employed in any asylum, strike, wound, ill-treat, or wilfully neglect any lunatic confined therein,—he shall be guilty of a misdemeanor, and shall be subject to indictment for every such offence,—or to forfeit for every such offence, on a summary conviction thereof before two justices, any sum not exceeding twenty pounds nor less than two pounds (*l*).

Commitment for misdemeanor:—*On ——, at ——, being then a superintendent employed in a certain lunatic asylum there, unlawfully did strike, wound and ill-treat one C. D., a lunatic therein confined: against the form of the statute in such case provided. And you the said keeper*, &c.

The like, in private asylums.] By stat. 8 & 9 Vict. c. 100, s. 56, if any superintendent, officer, nurse, attendant, servant, or other person employed in any licensed house or registered hospital, shall in any way abuse or ill-treat any patient confined therein, or shall wilfully neglect any such patient, he shall be deemed guilty of a misdemeanor; and it shall be lawful for the home secretary, on the report of the commissioners, or visitors of any asylums, to direct Her Majesty's attorney-general to prosecute, on the part of the crown, any person who shall have been concerned in the neglect or ill-treatment of any patient or person so confined (*m*).

Also, by stat. 16 & 17 Vict. c. 96, s. 9, if any superintendent, officer, nurse, attendant, servant, or other person employed in any registered hospital or licensed house, or any person having the care or charge of any single patient, or any attendant of any single patient, in any way abuse, or ill-treat, or wilfully neglect any patient in such hospital or house, or such single patient, or if any person detaining, or taking or having the care or charge, or concerned or taking part in the custody, care, or treatment, of any lunatic or person alleged to be a lunatic, in any way abuse, ill-treat, or wilfully neglect such lunatic or alleged lunatic, he shall be guilty of a misdemeanor, and shall be subject to indictment for every such offence, or to forfeit for every such offence, on a summary

(*l*) 16 & 17 Vict. c. 97, s. 123. (*m*) 8 & 9 Vict. c. 100, s. 56.

conviction thereof before two justices, any sum not exceeding twenty pounds (*n*).

The commitment for this offence, may readily be framed from the last form.

MAINTENANCE.

Maintenance is an upholding of the quarrels or suits of others, to the disturbance or hindrance of common right; and is punishable upon indictment as a misdemeanor, with fine or imprisonment or both (*a*). This however does not extend to pecuniary or other assistance afforded by relations (*b*), or by a person having a common interest with the party in the matter in dispute (*c*), or given out of charity (*d*), or by counsel or attornies professionally (*e*). Where the maintainer is to have a portion of the matter in dispute, for the assistance to be afforded by him, the offence is called champerty, and is punishable in like manner (*f*).

MALICIOUS INJURIES.

Malicious injuries to property are punishable principally by stat. 7 & 8 G. 4, c. 30; with respect to which, it may be necessary to observe, that in all offences within that statute, it is immaterial whether the offence shall be committed from malice conceived against the owner of the property in respect of which it shall be committed, or otherwise (*g*). And in all these cases, if it be proved that the party accused committed the offence wilfully, it may be fairly presumed that he did it maliciously. We shall treat of these offences in the following order:—

(*n*) 16 & 17 Vict. c. 96, s. 9.
(*a*) 1 Hawk. c. 83, ss. 1, 2.
(*b*) Id. s. 20.
(*c*) Id. s. 18.
(*d*) Id. s. 20.
(*e*) See *Master* v. *Miller*, 4 T. R. 340, per Buller, J.
(*f*) 1 Hawk c. 84.
(*g*) 7 & 8 G. 4, c. 30, s. 25.

1. *Malicious Injuries to Houses, &c.*

Setting fire to a church or chapel.] "Whosoever shall unlawfully and maliciously set fire to a church or chapel, or to any chapel for the religious worship of persons dissenting from the united church of England and Ireland:" felony, transportation for life, or not less than fifteen years, or imprisonment with or without hard labour for not more than three years (*h*).

Commitment:—*On ——, at ——, unlawfully, maliciously and feloniously did set fire to a certain* [*church*] *there situate: against the form of the statute in such case made and provided. And you the said keeper*, &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 493.

Setting fire to a dwelling-house, any person being therein.] "Whosoever shall unlawfully and maliciously set fire to any dwelling-house, any person being therein:" felony, death (*i*). If there be no proof of any person being in the house at the time, the prisoner should be committed under the next section, *infra*; and to bring the case within that section, it must be shown that the offence was committed with intent to injure or defraud some person (*k*). Where a woman was indicted for

(*h*) 1 Vict. c. 8
(*i*) Id. s. 2.
(*k*) *R.* v. *Paice*, Car. & K. 73.

setting fire to a dwelling-house, J. S. being therein; she had in fact set fire to an outhouse under the same roof, J. S. being then in the dwelling-house, but before the fire reached the dwelling-house (which it afterwards burnt), J. S. had escaped from it: it was holden that she was not guilty of the aggravated felony, but merely of the arson (*l*).

Commitment:—*On* ——, *at* ——, *unlawfully, maliciously and feloniously did set fire to a certain dwelling-house of C. D. there situate, one E. F. being, at the time of the committing of the said felony, in the said dwelling-house: against the form of the statute in such case made and provided. And you the said keeper*, &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 489.

Setting fire to a house, out-house, manufactory, &c.] Whosoever shall, "unlawfully and maliciously set fire to any house, stable, coach-house, out-house, warehouse, office, shop, mill, malt-house, hop-oast, barn or granary, or to any building or erection used in carrying on any trade or manufacture, or any branch thereof, whether the same or any of them respectively shall then be in the possession of the offender, or in the possession of any other person, with intent thereby to injure or defraud any person:" felony, transportation for life or not less than fifteen years, or imprisonment with or without hard labour for not more than three years (*m*). The word "house" here, seemingly means a dwelling-house only (*n*). As to what shall be deemed an out-house, see *Arch. New Cr. Law*, 486; *and R.* v. *Winter*, R. & Ry. 295. *R.* v. *Ellison and Vines*, Ry. & M. 336. *R.* v. *Haughton*, 5 Car. & P. 555. *R.* v. *Parrott*, 6 Id. 402.

Commitment:—*On* ——, *at* ——, *unlawfully, maliciously and feloniously did set fire to a certain* [*dwelling-house*] *of C. D. there situate, with intent then and there to* [*injure the said C. D.*, or *to defraud a certain insurance company called* ——]: *against the form of the statute in such case made and provided. And you the said keeper*, &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 485.

Setting fire to a hovel, shed, fold, &c.] "Whoever shall unlawfully and maliciously set fire to any hovel, shed, or fold, or to any farm building, or any building or erection used in farming land, whether the same or any of them respectively

(*l*) *R.* v. *Fletcher*, 2 Car. & K. 215.

(*m*) 1 Vict. c. 89, s. 3.

(*n*) 2 Arch. New Cr. Law, 486.

shall then be in the possession of the offender, or in the possession of any other person, with intent thereby to injure or defraud any person:" felony, transportation for life or not less than fifteen years; or imprisonment for not more than three years (*o*), and if a male under the age of eighteen, he may be publicly or privately whipped, not exceeding thrice, if the court so direct (*p*). Nothing is said in this Act as to hard labour; but as the 4th section enacts that this Act shall be deemed a part of stat. 1 Vict. c. 89, and by the 12th section of that Act the imprisonment may be with or without hard labour, it is very probable that it would be holden that for an offence under this Act, hard labour may be awarded as well as imprisonment.

Commitment:—*On* ——, *at* ——, *unlawfully, maliciously and feloniously did set fire to a certain* ["hovel, shed, fold, or farm building"] *of C. D. there situate, with intent then and there to injure the said C. D.* [or *to defraud a certain insurance company called* ——]: *against the form of the statute in such case made and provided. And you the said keeper*, &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 491.

Setting fire to hay, straw, &c. in a farm building, with intent to set fire to the building.] "Whosoever shall unlawfully and maliciously set fire to any hay, straw, wood, or other vegetable produce, being in any farm house or farm building, or to any implement of husbandry being in any farm house or farm building, with intent thereby to set fire to such farm house or farm building, and to injure or defraud any person, shall be liable to the pains and penalties of unlawfully and maliciously setting fire to the said farm house or farm building with intent thereby to injure or defraud such person" (*q*).

Commitment:—*On* ——, *at* ——, *unlawfully, maliciously and feloniously did set fire to a certain quantity, to wit, two loads of straw, in a certain farm building, to wit, a barn of C. D. there situate, with intent thereby then and there unlawfully, maliciously and feloniously to set fire to such farm building, and to injure the said C. D.* [or *to defraud a certain insurance company called* ——]: *against the form of the statute in such case made and provided. And you the* *er*, &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 492.

(*o*) 7 & 8 Vict. c. 62, s. 1.
(*p*) Id. s. 3.
(*q*) 7 & 8 Vict. c. 62, s. 2; and see sects. 1 & 3, *supra*.

Attempting to set fire to buildings, &c.] "Whoever shall unlawfully and maliciously by any overt act attempt to set fire to any building, vessel, or mine,—or to any stack or steer,—or to any vegetable produce of such kind, and with such intent, that if the offence were complete the offender would be guilty of felony, and liable to be transported beyond the seas for the term of his natural life,—shall, although such building, vessel, mine, stack, steer, or vegetable produce be not actually set on fire, be guilty of felony:" transportation for not more than fifteen years, or imprisonment for not more than two years (*q*).

Commitment:—*On* ——, *at* —— *did unlawfully, maliciously and feloniously attempt to set fire to a certain dwelling house,* [*&c. supra*] *of A. B. there situate, and did with that intent* [here state the overt act]: *against the form of the statute in such case made and provided. And you the said keeper*, &c.

Riotously demolishing a church, house, &c.] "If any persons, riotously and tumultuously assembled together to the disturbance of the public peace, shall unlawfully and with force demolish, pull down, or destroy, or begin to demolish, pull down, or destroy any church or chapel, or any chapel for the religious worship of persons dissenting from the united church of England and Ireland, duly registered or recorded,—or any house, stable, coach-house, out-house, warehouse, office, shop, mill, malthouse, hop-oast, barn or granary,—or any building or erection used in carrying on any trade or manufacture, or any branch thereof, or any machinery, whether fixed or moveable, prepared for or employed in any manufacture, or in any branch thereof,—or any steam engine or other engine for sinking, draining, or working any mine, or any staith, building, or erection used in conducting the business of any mine, or any bridge, waggonway, or trunk for conveying minerals from any mine:" felony (*r*), transportation for life or for any term not less than seven years, or imprisonment with or without hard labour for not more than three years (*s*).

Destroying a house by fire, if done by several, in a riotous way, is a demolition of it within the meaning of this statute, and the offenders may be committed or indicted accordingly; it is not necessary that they should be prosecuted for arson (*t*). And where the house was actually destroyed by the fire, it was holden that a person present and aiding whilst it was

(*q*) 9 & 10 Vict. c. 25, s. 7.
(*r*) 7 & 8 G. 4, c. 30, s. 8.
(*s*) 6 & 7 Vict. c. 10.
(*t*) *R.* v. *Harris et al.*, Car. & M. 661. *R.* v. *Christian et al.*, 12 Law J. 26, m.

burning, but not when it was first set fire to, might be convicted (*u*).

Where it appeared that the prisoners and others, in the night time, riotously broke into the prosecutor's house, broke some of the furniture, and all the windows, and then went away, it appearing that there was nothing to prevent the rioters from doing further damage if they thought fit: Littledale, J., held, that this was not a beginning to demolish, within the meaning of the Act; to bring the case within the Act, it must appear that the rioters intended to demolish the house, and not to injure it merely (*x*). So, where a mob attacked a man against whom they had some animosity, and he escaped into a public-house, which was immediately closed against the mob; the mob insisted on the man being given up to them, saying that otherwise they would pull the house down; and the man not being given up, they attacked the house with sticks and stones, beat in the door and lower windows, and entered the house; but not finding the man there, and hearing that the mayor was coming, they went away: Tindal, C. J., held, that this was not a beginning to demolish, within the meaning of this Act, the intention of the mob being evidently not to destroy the house, but to get the man into their power (*y*). But where, in such a case, the mob remained after the obnoxious individual had escaped, and continued to attack the house, until the police interfered, and compelled them to desist; Gurney, B., left it to the jury to say whether they had not the intention to demolish the house, as well as to injure the person whom they sought: and the jury, being of that opinion, found the prisoners guilty (*z*). But where a man demolished a cottage which he believed to be his own, and he was assisted in it by others, and it was done in a riotous way: this was holden by Patteson, J., not to be a case within the meaning of the statute (*a*).

Commitment:—*For that they, together with divers other persons unknown, on ——, at ——, unlawfully, riotously, and tumultuously did assemble together, to the disturbance of the public peace; and being so unlawfully, riotously, and tumultuously assembled together as aforesaid, did unlawfully, feloniously, and with force [begin to] demolish, pull down, and destroy the dwelling-house of G. H., there situate: against the form of the statute in such case made and provided. And you the said keeper*, &c.

(*u*) *R.* v. *Simpson et al.*, Car. & M. 669.

(*x*) *R.* v. *Thomas*, 4 Car. & P. 237. *R.* v. *Adams et al.*, Car. & M. 299. See *R.* v. *Howell et al.*, 9 Car. & P. 437.

(*y*) *R.* v. *Price and others*, 5 Car. & P. 510.

(*z*) *R.* v. *Batt and others*, 6 Car. & P. 329.

(*a*) *R.* v. *Langford et al.*, Car. & M. 602.

Where a commitment stated the charge to be, that the defendants and others "began to pull down and destroy, *in part*, a dwelling-house, by," &c.: Patteson, J., held it to be bad; their beginning to pull down the house "in part," may be good evidence of the offence, but it is not the offence created by the Act (*b*).

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 494.

Destroying or damaging a house with gunpowder, any person being therein.] "Whoever shall unlawfully and maliciously, by the explosion of gunpowder or other explosive substance, destroy, throw down, or damage the whole or any part of any dwelling-house, any person being therein, shall be guilty of felony (*c*):" transportation for life or not less than fifteen years, or imprisonment, with or without hard labour, for not more than three years (*d*). This offence cannot be tried at sessions (*e*).

Commitment:—*On* ——, *at* ——, *unlawfully, maliciously and feloniously did, by the explosion of certain gunpowder, throw down and damage a part of the dwelling-house of C. D. there situate, the said C. D. then being therein: against the form of the statute in such case made and provided. And you the said keeper*, &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 496.

Destroying or damaging any building with gunpowder, with intent to murder.] "Whoever shall unlawfully and maliciously, by the explosion of gunpowder or other explosive substance, destroy or damage any building, with intent to murder any person, or whereby the life of any person shall be endangered, shall be guilty of felony (*f*):" transportation for life or not less than fifteen years, or imprisonment, with or without hard labour, for not more than three years (*g*). This offence cannot be tried at sessions (*h*).

Commitment:—*On* ——, *at* ——, *unlawfully, maliciously and feloniously did, by the explosion of certain gunpowder, damage a certain building, to wit, a* ——, *with intent then and thereby to murder one C. D.*, [or *whereby the life of one C. D. was then endangered*]: *against the form of the statute in such case made and provided. And you the said keeper*, &c.

(*b*) *R.* v. *Lowden et al.*, 7 Dowl. 538.
(*c*) 9 & 10 Vict. c. 25, s. 1.
(*d*) Id. s. 5.
(*e*) 9 & 10 Vict. c. 25, s. 15.
(*f*) Id. s. 2.
(*g*) Id. s. 5.
(*h*) Id. s. 15.

Attempting to destroy buildings, &c. with gunpowder.] "Whoever shall unlawfully and maliciously place or throw in, into, upon, against, or near any building or vessel any gunpowder or other explosive substance, with intent to do any bodily damage to any person,—or to destroy or damage any building or vessel, or any machinery, working tools, fixtures, goods, or chattels,—shall, whether or not any explosion take place, and whether or not any injury is effected to any person, or any damage to any building, vessel, machinery, working tools, fixtures, goods, or chattels, be guilty of felony:" transportation for not more than fifteen years, or imprisonment for not more than two years (*i*). This offence cannot be tried at sessions (*k*).

Commitment:—*On* ——, *at* ——, *unlawfully, maliciously and feloniously did place certain gunpowder near unto a certain building of one C. D. there, with intent thereby to do bodily damage to the said C. D.* [or as the case may be]: *against the form of the statute in such case made and provided. And you the said keeper*, &c.

Making or having gunpowder, with intent to commit any of the said offences.] "Whoever shall knowingly have in his possession, or make or manufacture, any gunpowder, explosive substance, or any dangerous or noxious thing,—or any machine, engine, instrument, or thing,—with intent by means thereof to commit, or for the purpose of enabling any other person to commit, any offence against this Act:" misdemeanor, imprisonment for not more than two years (*l*). This offence cannot be tried at sessions (*m*).

Commitment:—*On* ——, *at* ——, *did knowingly have in his possession certain gunpowder, with intent by means thereof to destroy a certain building there of one C. D., and then and thereby to murder the said C. D.,* [so describing one of the three last-mentioned offences]: *against the form of the statute in such case made and provided. And you the said keeper*, &c.

2. *Malicious Injuries to Manufactures, Machinery, &c.*

Destroying goods in process of manufacture, machinery, &c.] "If any person shall unlawfully and maliciously cut, break or destroy, or damage with intent to destroy or to render useless,

(*i*) 9 & 10 Vict. c. 25, s. 6.
(*k*) Id. s. 15.
(*l*) 9 & 10 Vict. c. 25, s. 8.
(*m*) Id. s. 15.

any goods or article of silk, woollen, linen, or cotton, or of any one or more of those materials mixed with each other, or mixed with any other material, or any framework-knitted piece, stocking, hose, or lace respectively, being in the loom or frame, or on any machine or engine, or on the rack or tenters, or in any stage, process, or progress of manufacture; —or shall unlawfully and maliciously cut, break or destroy, or damage with intent to destroy or to render useless, any warp or shute of silk, woollen, linen, or cotton, or of any one or more of those materials mixed with each other, or mixed with any other material,—or any loom, frame, machine, engine, rack, tackle, or implement, whether fixed or moveable, prepared for or employed in carding, spinning, throwing, weaving, fulling, shearing, or otherwise manufacturing or preparing any such goods or articles;—or shall by force enter into any house, shop, building, or place, with intent to commit any of the offences aforesaid:" felony, transportation for life, or for not less than seven years, or imprisonment [with or without hard labour (*a*)], for not more than four years, and, if a male, to be once, twice, or thrice publicly or privately whipped (if the court shall so think fit), in addition to such imprisonment (*b*).

Commitment for destroying goods in the loom, &c.:—*On ——, at ——, twenty-five yards of woollen cloth, of the goods and chattels of C. D., in a certain loom,* ["in the loom or frame, or on any machine or engine, or on the rack or tenters, or in any stage, process or progress of manufacture"], *then and there being, then and there unlawfully, maliciously, and feloniously did cut, break, and destroy,* [or, *did damage, by* (stating how), *with intent then and there feloniously to destroy the said cloth, and to render the same useless*] : *against the form of the statute in such case made and provided. And you the said keeper,* &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 498.

Commitment for destroying warps of silk, or certain machinery, &c.:—*On ——, at ——, a certain warp of silk* [or as the case may be] *of the property of C. D., then and there unlawfully, maliciously, and feloniously did cut, break, and destroy,* [or *did damage, by* (stating how), *with intent then and there feloniously to destroy the said warp, and to render the same useless*] : *against the form of the statute in such case made and provided. And you the said keeper,* &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 499.

(*a*) 7 & 8 G. 4, c. 30, s. 27. (*b*) Id. s. 3.

Commitment for entering a building by force, with intent to commit either of the two last-mentioned offences:—*On* ——, *at* ——, *into a certain house and building* [" house, shop, building or place"] *of C. D. there situate, feloniously and by force did enter, with intent then and there* [*certain woollen goods of the said C. D., in a certain loom then and there being*, or *certain looms and machinery then and there prepared for and employed in the weaving, manufacturing, and preparing of woollen goods*, or stating in other appropriate terms an intent to commit the offences stated in either of the last two forms] *unlawfully, maliciously, and feloniously to cut, break, and destroy: against the form of the statute in such case made and provided. And you the said keeper*, &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 500.

Destroying machines in other manufactures, thrashing machines, &c.] "If any person shall unlawfully and maliciously cut, break, or destroy, or damage with intent to destroy or to render useless, any thrashing machine, or any machine or engine, whether fixed or moveable, prepared for or employed in any manufacture whatsoever, (except the manufacture of silk, woollen, linen, or cotton goods, or goods of any one or more of those materials mixed with each other, or mixed with any other material, or any framework-knitted piece, stocking, hose, or lace):" felony, transportation for seven years, or imprisonment [with or without hard labour (*c*)], for not more than two years; and if a male, to be once, twice, or thrice publicly or privately whipped (if the court shall so think fit), in addition to such imprisonment (*d*).

Commitment:—*On* ——, *at* ——, *a certain thrashing machine*, [or, *a certain machine and engine, called a* ——, *then and there prepared for and employed in the manufacture of* ——, *the same not being prepared for or employed in the manufacture of silk, woollen, linen, or cotton goods, or goods of any one or more of those materials mixed with each other, or mixed with any other material, or any framework-knitted piece, stocking, hose, or lace*,] *of the property of C. D., unlawfully, maliciously and feloniously did cut, break, and destroy*, [or, *did damage by* (stating how), *with intent then and there feloniously to destroy the said machine, and to render the same useless*]: *against the form of the statute in such case made and provided. And you the said keeper*, &c.

(*c*) 7 & 8 G. 4, c. 30, s. 27. (*d*) 7 & 8 G. 4, c. 30, s. 4.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 501.

3. *Malicious Injuries to Individuals.*

Burning, disfiguring or disabling a person with gunpowder, &c.] "Whoever shall unlawfully or maliciously, by the explosion of gunpowder or other explosive substance, burn, maim, disfigure, disable, or do any grievous bodily harm to any person, shall be guilty of felony:" transportation for life, or not less than fifteen years, or imprisonment for not more than three years (*a*).

Commitment: *On ——, at ——, unlawfully, maliciously and feloniously did, by the explosion of certain gunpowder, burn and disfigure one C. D.* [or as the case may be]: *against the form of the statute in such case made and provided. And you the said keeper*, &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 278.

Exploding, or sending explosive substances, or throwing corrosive fluids, with intent, &c.] "Whoever shall unlawfully and maliciously cause any gunpowder or other explosive substance to explode,—or send or deliver to, or cause to be taken or received by any person any explosive substance, or any other dangerous or noxious thing,—or cast or throw at or upon or otherwise apply to any person any corrosive fluid or other destructive or explosive substance,—with intent, in any of the cases aforesaid, to burn, maim, disfigure, or disable any person, or to do some grievous bodily harm to any person,—shall, although no bodily injury be effected, be guilty of felony (*b*):" transportation for life or not less than fifteen years, or imprisonment for not more than three years (*c*).

Commitment for causing gunpowder to explode, with intent, &c.:—*On ——, at ——, unlawfully, maliciously and feloniously did cause certain gunpowder to explode, with intent then and thereby to* [*burn and disfigure*] *one C. D.*:

(*a*) 9 & 10 Vict. c. 25, s. 1.
(*b*) Id. s. 4.
(*c*) Id. s. 5.

against the form of the statute in such case made and provided. And you the said keeper, &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 278.

Commitment for sending an explosive substance, with intent, &c.:—*On* ——, *at*——, *unlawfully, maliciously and feloniously did* [*send*] *to one C. D. a certain quantity of a certain explosive substance, to wit,* —— *of* ——, *with intent thereby to* [*burn and disfigure*] *the said C. D.: against the form of the statute in such case made and provided. And you the said keeper,* &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 279.

Commitment for throwing corrosive fluid on a person, with intent, &c. :—*On* ——, *at* ——, *unlawfully, maliciously and feloniously did cast and throw at and upon one C. D. a large quantity of a* [*corrosive fluid*], *to wit,* —— *of* ——, *with intent then and thereby to* [*burn*] *the said C. D.: against the form of the statute in such case made and provided. And you the said keeper*, &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 280.

As to destroying a house with gunpowder or other explosive substance, any person being therein, see *ante*, p. 278; and the like with intent to murder, *ante*, p. 278. And as to setting fire to a house, any person being therein, see *ante*, p. 273.

As to attempts to murder, or to do grievous bodily harm to any person, by shooting, stabbing, wounding, &c., see *ante*, p. 40, &c.

4. *Malicious Injuries to Corn, Trees, Fences, &c.*

Setting fire to crops of corn, &c.] "If any person shall unlawfully and maliciously set fire to any crop of corn, grain, or pulse, whether standing or cut down,—or to any part of a wood, coppice, or plantation of trees, or to any heath, gorze,

furze, or fern, wheresoever the same may be growing:" felony, transportation for seven years, or imprisonment, with or without hard labour, for not more than two years; and if a male, to be once, twice, or thrice publicly or privately whipped (if the court shall so think fit) in addition to such imprisonment (*a*).

Commitment:—*On* ——, *at* ——, *unlawfully, maliciously, and feloniously did set fire to a certain crop of wheat, the property of C. D., then and there standing and growing: against the form of the statute in such case made and provided. And you the said keeper,* &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 502.

Setting fire to stacks of corn, &c.] "Whoever shall unlawfully and maliciously set fire to any stack of corn, grain, pulse, tares, straw, haulm, stubble, furze, heath, fern, hay, turf, peat, coals, charcoal or wood, or any steer of wood:" felony, transportation for life or not less than fifteen years, or imprisonment for not more than three years (*b*). Beans are "pulse" within the meaning of this section (*c*).

Commitment:—*On* ——, *at* ——, *unlawfully, maliciously, and feloniously did set fire to a certain stack of wheat* [or as the case may be] *of C. D., then and there being: against the form of the statute in such case made and provided. And you the said keeper,* &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 503.

Destroying hopbinds.] "If any person shall unlawfully and maliciously cut or otherwise destroy any hopbinds, growing on poles in any plantation of hops:" felony (*d*), transportation for fifteen years or for not less than ten years, or imprisonment [with or without hard labour (*e*)] for not more than three years, with certain solitary imprisonment (*f*).

Commitment:—*On* ——, *at* ——, *one thousand hopbinds, the property of one C. D., then and there growing on poles, in a certain plantation of hops, of the said C. D., there situate, unlawfully, maliciously, and feloniously did cut and destroy* ["cut or otherwise destroy"]: *against the form of the*

(*a*) 7 & 8 G. 4, c. 30, ss. 17, 27. See *R.* v. *Price*, 9 Car. & P. 729.
(*b*) 1 Vict. c. 89, s. 10.
(*c*) *R.* v. *Woodward*, Ry. & M. 323.
(*d*) 7 & 8 G. 4, c. 30, s. 18.
(*e*) Id. s. 27.
(*f*) 1 Vict. c. 90, ss. 2, 3.

statute in such case made and provided. And you the said keeper, &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 505.

Destroying or damaging trees, shrubs, &c.] "If any person shall unlawfully and maliciously cut, break, bark, root up, or otherwise destroy or damage the whole or any part of any tree, sapling, or shrub, or any underwood, respectively growing in any park, pleasure-ground, garden, orchard, or avenue, or in any ground adjoining or belonging to any dwelling-house;" such offender (if the amount of the injury done shall exceed the sum of one pound) shall be guilty of felony, and shall be transported for seven years, or shall be imprisoned [with or without hard labour (*g*)], for not more than two years; and if a male, to be once, twice, or thrice publicly or privately whipped (if the court shall so think fit), in addition to such imprisonment;—and "if any person shall unlawfully and maliciously cut, break, bark, root up, or otherwise destroy or damage the whole or any part of any tree, sapling, or shrub, or any underwood, respectively growing elsewhere than in any of the situations hereinbefore mentioned;" such offender (if the amount of the injury done shall exceed the sum of five pounds) (*h*) shall be guilty of felony, and liable to the same punishment as the felony hereinbefore last mentioned (*i*).

Commitment for damaging trees, &c., growing in parks or pleasure-grounds, &c.:—*On* ——, *at* ——, *in a certain park* [or as the case may be] *of C. D., there situate, ten oak trees, the property of the said C. D., in the said park then and there growing, then and there unlawfully, maliciously, and feloniously did cut and damage; thereby doing injury unto the said C. D. to an amount exceeding the sum of one pound: against the form of the statute in such case made and provided. And you the said keeper*, &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 506.

Commitment for damaging trees, &c., growing elsewhere:—*On* ——, *at* ——, *in a certain close of C. D., there situate, ten oak trees, the property of the said C. D. then and there growing, unlawfully, maliciously, and feloniously did cut and damage; thereby doing injury unto the said C. D., to an amount exceeding the sum of five pounds: against the*

(*g*) 7 & 8 G. 4, c. 30, s. 27.

(*h*) See *R.* v. *Whiteman*, 23 Law J. 120, m.

(*i*) 7 & 8 G. 4, c. 30, s. 19. *Vide supra*.

form of the statute in such case made and provided. And you the said keeper, &c.

Damaging trees, shrubs, &c. to amount of 1*s., third offence.*] "If any person shall unlawfully and maliciously cut, break, bark, root up, or otherwise destroy or damage the whole or any part of any tree, sapling, or shrub, or any underwood, wheresoever the same may be respectively growing, the injury done being to the amount of one shilling at the least:" such offender, for a third offence (after summary conviction for a first and second offence) (*k*), shall be deemed guilty of felony; transportation for seven years, or imprisonment with or without hard labour for not more than two years (*l*).

Commitment:—*On* ——, *at* ——, *one larch tree, the property of C. D., then and there growing, unlawfully, maliciously, and feloniously did cut and damage, thereby doing injury unto the said C. D., to the amount of one shilling at the least: against the form of the statute in such case made and provided; he the said A. B. having previously been twice convicted of the like offence. And you the said keeper*, &c.

Damaging plants, fruits, &c., in gardens, second offence.] "If any person shall unlawfully and maliciously destroy, or damage with intent to destroy, any plant, root, fruit, or vegetable production growing in any garden, orchard, nursery ground, hothouse, greenhouse, or conservatory:" such offender for a second offence (after a summary conviction for a first offence) (*m*), shall be deemed guilty of felony: transportation for seven years, or imprisonment with or without hard labour, for not more than two years (*n*).

Commitment:—*On* ——, *at* ——, *unlawfully, maliciously and feloniously did destroy* [ten peaches] *the property of C. D., then growing in a certain* [hothouse] *of the said C. D.: against the form of the statute in such case made and provided, he the said A. B. having previously been convicted of the like offence. And you the said keeper*, &c.

(*k*) See *ante*, vol. 2, p. 806.
(*l*) 7 & 8 G. 4, c. 30, ss. 20, 19.
(*m*) See *ante*, vol. 2, p. 808.
(*n*) 7 & 8 G. 4, c. 30, ss. 21, 19.

5. *Malicious Injuries to Mines.*

Setting fire to a coal mine.] "Whosoever shall unlawfully and maliciously set fire to any mine of coal or cannel coal:" felony, transportation for life or not less than fifteen years, or imprisonment with or without hard labour for not more than three years (*a*), and public or private whipping (*b*).

Commitment: — *On* ——, *at* ——, *unlawfully, maliciously, and feloniously did set fire to a certain mine of coal of C. D. and others, there situate: against the form of the statute in such case made and provided. And you the said keeper,* &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law,* 507.[1]

As to attempts to commit this offence, see stat. 9 & 10 Vict. c. 25, s. 7, *ante*, p. 276.

Conveying water into a mine, obstructing the shaft, &c.] "If any person shall unlawfully and maliciously cause any water to be conveyed into any mine, or into any subterraneous passage communicating therewith, with intent thereby to destroy or damage such mine, or to hinder or delay the working thereof;—or shall, with the like intent, unlawfully and maliciously pull down, fill up, or obstruct any airway, waterway, drain, pit, level, or shaft of or belonging to any mine:" felony, transportation for seven years, or imprisonment with or without hard labour, for not more than two years; and, if a male, to be once, twice, or thrice publicly or privately whipped (if the court shall so think fit), in addition to such imprisonment: provided always, that this provision shall not extend to any damage committed under ground by any owner of an adjoining mine in working the same, or by any person duly employed in such working (*c*).

Commitment for conveying water into it:—*On* ——, *at* ——, *unlawfully, maliciously, and feloniously did cause a*

(*a*) 1 Vict. c. 89, s. 9.
(*b*) 9 & 10 Vict. c. 25, s. 9.
(*c*) 7 & 8 G. 4, c. 30, s. 6.

large quantity of water to be conveyed into a certain mine of C. D., there situate, with intent thereby to damage and destroy [or, *to hinder and delay the working of*] *the said mine: against the form of the statute in such case made and provided. And you the said keeper*, &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 508.

Commitment for obstructing airways, shafts, &c.:—*On* ——, *at* ——, *unlawfully, maliciously, and feloniously did fill up a certain airway, of and belonging to a certain mine of C. D., there situate, with intent thereby to damage and destroy* [or *to hinder and delay the working of*] *the said mine: against the form of the statute in such case made and provided. And you the said keeper*, &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 509.

Damaging the steam-engines, staiths, waggonways, &c.] And "if any person shall unlawfully and maliciously pull down or destroy, or damage with intent to destroy or to render useless, any steam-engine or other engine for sinking, draining or working any mine,—or any staith, building, or erection used in conducting the business of any mine,—or any bridge, waggonway or trunk for conveying minerals from any mine, —whether such engine, staith, building, erection, bridge, waggonway, or trunk be completed or in an unfinished state:" felony, same punishment as hereinbefore last mentioned (*d*).

Commitment:—*On* ——, *at* ——, *a certain steam-engine, the property of C. D., for the sinking, draining, and working of a certain mine of the said C. D., there situate, unlawfully, maliciously, and feloniously did pull down and destroy* [or, *did damage by* (stating how), *with intent then and there feloniously to destroy the said engine, and to render the same useless*]: *against the form of the statute in such case made and provided. And you the said keeper*, &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 510.

(*d*) 7 & 8 G. 4, c. 30, s. 7. *Vide supra*; and see *R.* v. *Whittingham et al.*, 9 Car. & P. 234. *R.* v. *Norris et al.*, Id. 241.

6. *Malicious Injuries to Rivers, Canals, Ponds, Bridges, Turnpike Gates, &c.*

Injuries to rivers, canals, &c.] "If any person shall unlawfully and maliciously break down or cut down, any sea bank or sea wall, or the bank or wall of any river, canal, or marsh, whereby any lands shall be overflowed or damaged, or shall be in danger of being so,—or shall unlawfully and maliciously throw down, level, or otherwise destroy, any lock, sluice, floodgate or other work on any navigable river or canal:" felony, transportation for life, or for not less than seven years, or imprisonment, with or without hard labour, for not more than four years; and, if a male, to be once, twice, or thrice publicly or privately whipped (if the court shall so think fit), in addition to such imprisonment (*a*).

Commitment for breaking down sea or river banks:—*On ——, at ——, a certain part of the bank of a certain canal called the ——, there situate, unlawfully, maliciously, and feloniously did break down and cut down, by means whereof certain lands were then and there [in danger of being] overflowed and damaged: against the form of the statute in such case made and provided. And you the said keeper*, &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 512.

Commitment for destroying locks, sluices, &c.:—*On ——, at ——, a certain lock on a navigable river, called the ——, there situate and being, unlawfully, maliciously, and feloniously did throw down, level and destroy: against the form of the statute in such case made and provided. And you the said keeper*, &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 513.

(*a*) 7 & 8 G. 4, c. 30, ss. 12, 27.

Removing piles, drawing up floodgates, &c.] And "if any person shall unlawfully and maliciously cut off, draw up, or remove any piles, chalk, or other materials fixed in the ground, and used for securing any sea bank or sea wall, or the bank or wall of any river, canal, or marsh,—or shall unlawfully and maliciously open or draw up any floodgate, or do any other injury or mischief to any navigable river or canal,—with intent and so as thereby to obstruct or prevent the carrying on, completing or maintaining the navigation thereof:" felony, transportation for seven years, or imprisonment (with or without hard labour) for not more than two years; and if a male, to be once, twice, or thrice publicly or privately whipped (if the court shall so think fit), in addition to such imprisonment (*b*).

Commitment for removing piles, &c.:—*On* ——, *at* ——, *a certain pile then and there fixed in the ground, and then and there used for securing the bank of a certain canal called the* ——, *there situate, then and there unlawfully, maliciously, and feloniously did draw up and remove: against the form of the statute in such case made and provided. And you the said keeper*, &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 513.

Commitment for drawing up floodgates, or doing other damage, &c.:—*On* ——, *at* ——, *unlawfully, maliciously, and feloniously did draw up and open a certain floodgate there situate, of and belonging to a certain navigable river, called the* ——, *with intent thereby then and there to obstruct and prevent the carrying on* [*completing*] *and maintaining of the navigation of the said river; and that the said A. B. thereby did obstruct and prevent the carrying on* [*completing*] *and maintaining of the navigation of the said river: against the form of the statute in such case made and provided. And you the said keeper*, &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 514.

Breaking down the dam of a fish or mill-pond, or putting in lime.] "If any person shall unlawfully and maliciously break down or otherwise destroy the dam of any fish-pond, or of any water which shall be private property, or in which there shall be any private right of fishery, with intent thereby to take or destroy any of the fish in such pond or water, or so as thereby to cause the loss or destruction of any of the fish;

(*b*) 7 & 8 G. 4, c. 30, ss. 12, 27.

—or shall unlawfully and maliciously put any lime or other noxious material in any such pond or water, with intent thereby to destroy any of the fish therein;—or shall unlawfully and maliciously break down or otherwise destroy the dam of any mill-pond:" misdemeanor, transportation for seven years, or imprisonment (with or without hard labour) for not more than two years; and, if a male, to be once, twice, or thrice publicly or privately whipped (if the court shall so think fit), in addition to such imprisonment (*c*).

Commitment for breaking down the dam of a fish-pond:—*On* ——, *at* ——, *the dam of a certain fish-pond, of one C. D., there situate, unlawfully and maliciously did break down and destroy* [*with intent thereby then and there to take and destroy the fish in the said pond;* or, *and did thereby then and there cause the loss and destruction of divers of the fish in the said pond*]: *against the form of the statute in such case made and provided. And you the said keeper*, &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 515.

Commitment for putting lime, &c., into a fish-pond:—*On* ——, *at* ——, *unlawfully and maliciously did put a large quantity of lime into a certain fish-pond of one C. D., there situate, with intent thereby to destroy the fish in the said pond: against the form of the statute in such case made and provided. And you the said keeper*, &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 516.

Commitment for breaking down the dam of a mill-pond:—*On* ——, *at* ——, *the dam of a certain mill pond of one C. D., there situate, unlawfully and maliciously did break down and destroy: against the form of the statute in such case made and provided. And you the said keeper*, &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 517.

Destroying or damaging bridges.] "If any person shall unlawfully and maliciously pull down or in anywise destroy any public bridge, or do any injury with intent, and so as thereby to render such bridge, or any part thereof, dangerous or impassable:" felony, transportation for life, or for not less than seven years, or imprisonment (with or without hard labour) for not more than four years; and, if a male, to be

(*c*) 7 & 8 G. 4, c. 30, ss. 15, 27.

once, twice, or thrice publicly or privately whipped (if the court shall so think fit), in addition to such imprisonment (*d*).

Commitment for destroying a bridge :—*On* ——, *at* ——, *a certain public bridge there situate, unlawfully, maliciously, and feloniously did pull down and destroy : against the form of the statute in such case made and provided. And you the said keeper*, &c.

Commitment for injuring a bridge, to render it dangerous or impassable :—*On* ——, *at* ——, *unlawfully, maliciously, and feloniously did* [here state the injury done], *with intent thereby the said bridge to render dangerous and impassable; and that the said A. B. thereby did render the same dangerous and impassable : against the form of the statute in such case made and provided. And you the said keeper*, &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 517.

Destroying turnpike gates, weighing machines, &c.] "If any person shall unlawfully and maliciously throw down, level, or otherwise destroy, in whole or in part, any turnpike gate, —or any wall, chain, rail, post, bar, or other fence belonging to any turnpike gate, or set up or erected to prevent passengers passing by without paying any toll directed to be paid by any Act or Acts of parliament relating thereto,—or any house, building, weighing engine, erected for the better collection, ascertainment or security of any such toll :" misdemeanor, and punishable accordingly (*e*).

Commitment :—*On* ——, *at* ——, *a certain turnpike gate* [or as the case may be], *there situate, unlawfully and maliciously did throw down, level, and destroy : against the form of the statute in such case made and provided. And you the said keeper*, &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 517.

7. *Malicious Injuries to Railways.*

Placing wood, &c., on rails, with intent, &c.] "If any person shall wilfully and maliciously put, place, cast, or

(*d*) 7 & 8 G. 4, c. 30, ss. 13, 27. (*e*) Id. s. 14.

throw upon or across any railway any wood, stone, or other matter or thing,—or shall wilfully and maliciously take up, remove, or displace any rail, sleeper, or other matter or thing belonging to any railway,—or shall wilfully and maliciously turn, move, or divert any points or other machinery belonging to any railway,—or shall wilfully and maliciously make or show, hide or remove, any signal or light upon or near to any railway,—or shall wilfully and maliciously do or cause to be done any other matter or thing,—with intent, in any of the cases aforesaid, to obstruct, upset, overthrow, injure, or destroy any engine, tender, carriage, or truck using such railway, or to endanger the safety of any person travelling or being upon such railway:" felony, transportation for life or for not less than seven years, or imprisonment, with or without hard labour, for not more than three years (*a*).

Commitment:—*On* ——, *at* ——, *wilfully, maliciously and feloniously did put, place, cast and throw a piece of wood upon and across a certain railway called* ——, *in the parish of* —— *in the county of* ——, *with intent thereby to obstruct and injure a certain engine and carriages using the said railway: against the form of the statute in such case made and provided. And you the said keeper*, &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 519.

Throwing a stone upon a railway carriage, with intent, &c.] "If any person shall wilfully and maliciously cast, throw, or cause to fall or strike against, into, or upon any engine, tender, carriage, or truck used upon any railway, any wood, stone, or other matter or thing, with intent to endanger the safety of any person being in or upon such engine, tender, carriage, or truck:" felony, transportation for life or for not less than seven years, or imprisonment, with or without hard labour, for not more than three years (*b*).

Commitment:—*On* ——, *at* ——, *wilfully, maliciously and feloniously did cast and throw a stone against and upon a certain carriage then used upon a certain railway called* ——, *with the intent thereby then to endanger the safety of the persons then being in the said carriage: against the form of the statute in such case made and provided. And you the said keeper*, &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 520.

(*a*) 14 & 15 Vict. c. 19, s. 6. (*b*) Id. s. 7.

Setting fire to stations or warehouses.] "If any person shall wilfully and maliciously set fire to any station, engine house, warehouse, or other building belonging or appertaining to any railway, dock, canal, or other navigation:" felony, transportation for life, or for not less than seven years, or imprisonment, with or without hard labour, for not more than three years;—"and if any person shall wilfully and maliciously set fire to any goods or chattels being in any building, the setting fire to which is made felony by this or any other Act of parliament:" felony, transportation for not more than ten years nor less than seven, or imprisonment, with or without hard labour, for not more than three years (*c*).

Commitment:—*On ——, at ——, wilfully, maliciously and feloniously did set fire to a certain* [*station*] *in the parish of —— in the county of ——, then belonging and appertaining to a certain* [*railway*] *called ——, and the property of the —— railway company: against the form of the statute in such case made and provided. And you the said keeper*, &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 521.

8. *Malicious Injuries to Works of Art.*

"Every person who shall unlawfully and maliciously destroy or damage anything kept for the purposes of art, science or literature, or an object of curiosity, in any museum, gallery or cabinet, library or other repository, which museum, gallery, cabinet, library or other repository is either at all times, or from time to time, open for the admission of the public, or of any considerable number of persons, to view the same, either by permission of the proprietor thereof, or by the payment of money before entering the same,—or any picture, statue, monument or painted glass in any church or chapel or other place of religious worship,—or any statue or monument exposed to public view:"—misdemeanor, imprisonment for not more than six months; and, if a male, may be put to hard labour, or be once, twice or thrice privately whipped (*a*).

Persons found offending, may be apprehended without warrant (*b*).

Commitment for damaging anything in a museum, &c.:—*On ——, at ——, unlawfully and maliciously did damage a certain ——, by then and there* [stating how], *which said*

(*c*) 14 & 15 Vict. c. 19, s. 8.
(*a*) 8 & 9 Vict. c. 44, s. 1.
(*b*) 8 & 9 Vict. c. 44, s. 3.

—— was then kept for the purposes of art and science, and as an object of curiosity, in a certain museum called ——, which museum then was from time to time open for the admission of the public to view the same: against the form of the statute in such case made and provided. And you the said keeper, &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 521.

Commitment for damaging any picture, statue or monument in a church or in public :—*On ——, at ——, unlawfully and maliciously did damage a certain* [*monument of C. D., deceased,*] *by* [stating how], *the said monument then being in the church of ——, in the parish of ——, in the county of ——: against the form of the statute in such case made and provided. And you the said keeper*, &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 522.

9. *Malicious Injuries to Animals.*

Killing or wounding cattle, sheep, &c.] "If any person shall unlawfully and maliciously kill, maim, or wound any cattle:" felony (*a*), transportation for fifteen years or for not less than ten years, or imprisonment [with or without hard labour (*b*)] for not more than three years; and certain solitary imprisonment (*c*). This section, under the term "cattle," includes not only horses, oxen, &c., but sheep. Asses are also cattle within the Act (*d*); so are pigs (*e*).

Commitment:—*On ——, at ——, one bay mare, the property of C. D., unlawfully, maliciously, and feloniously did kill* [kill, maim, or wound]: *against the form of the statute in such case made and provided. And you the said keeper*, &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 523.

As to breaking down the dam of a fish-pond, or putting lime, &c., into it, for the purpose of destroying fish, see *ante*, p. 290.

(*a*) 7 & 8 G. 4, c. 30, s. 16.
(*b*) Id. s. 27.
(*c*) 1 Vict. c. 90, ss. 1, 2.
(*d*) *R.* v. *James Whitney*, Ry. & M. 3.
(*e*) *R.* v. *Sarah Chapple*, R. & Ry. 77.

10. *Malicious Injuries to Ships.*

Setting fire to ships, whereby life endangered, &c.] "Whosoever shall unlawfully and maliciously set fire to, cast away, or in anywise destroy any ship or vessel, either with intent to murder any person, or whereby the life of any person shall be endangered:" felony, death (*a*). A pleasure-boat, eighteen feet long, Patteson, J., inclined to think was a vessel within the meaning of the Act (*b*). In another case, Alderson, B., doubted whether a barge was so (*c*).

Commitment:—*On* ——, *at* ——, *unlawfully, maliciously, and feloniously did* [*set fire to*] *a certain ship called the* ——, *the property of C. D.* [*upon the high seas*] *then and there being* [*with intent in so doing, one E. F. then and there feloniously, wilfully and of his malice aforethought to kill and murder*, or *whereby the life of one E. F. was then and there greatly endangered*]: *against the form of the statute in such case made and provided. And you the said keeper*, &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 525.

Setting fire to ships, with intent to prejudice the owner or underwriters.] "Whosoever shall unlawfully and maliciously set fire to, or in anywise destroy any ship or vessel, whether the same be complete or in an unfinished state,—or shall unlawfully and maliciously set fire to, cast away or in anywise destroy any ship or vessel, with intent thereby to prejudice any owner or part owner of such ship or vessel, or of any goods on board the same, or any person that hath underwritten or shall underwrite any policy of insurance upon such ship or vessel, or on the freight thereof, or upon any goods on board the same:" felony, transportation for life or not less than fifteen years, or imprisonment, with or without hard labour, for not more than three years (*d*). As to the meaning

(*a*) 1 Vict. c. 89, s. 4.
(*b*) *R.* v. *Bowyer et al.*, 4 Car. & P. 559.
(*c*) *R.* v. *Smith*, 4 Car. & P. 569.
(*d*) 1 Vict. c. 89, s. 6.

of the word "vessel," *vide supra.* The owner of the ship, or a part owner, may be convicted under this statute, either as a principal or accessory before the fact, if it appear that the intent was to prejudice underwriters (*e*).

Commitment:—*On* ——, *at* ——, *unlawfully, maliciously, and feloniously did* [*set fire to*] *a certain ship called the* ——, *the property of C. D.* [*upon the high seas*] *then and there being, with intent thereby then and there to prejudice* [*the said C. D. the owner thereof*, or *one E. F. the owner of certain goods on board thereof*, or *one G. H. and J. K. who had before then severally underwritten a certain policy of insurance upon* ——]: *against the form of the statute in such case made and provided. And you the said keeper*, &c.

See the form of an indictment for setting fire to a ship in an unfinished state, and the evidence necessary to support it, *Arch. New Cr. Law*, 526. The like, with intent to prejudice the owner or underwriters, *Id.* 527.

Damaging a ship, otherwise than by fire.] "If any person shall unlawfully and maliciously damage, otherwise than by fire, any ship or vessel, whether complete or in an unfinished state, with intent to destroy the same, or to render the same useless:" felony, transportation for seven years, or imprisonment [with or without hard labour (*f*)] for not more than two years; and, if a male, to be once, twice, or thrice publicly or privately whipped (if the court shall so think fit), in addition to such imprisonment (*g*).

Commitment:—*On* ——, *at* ——, *on board of a certain ship and vessel called the* ——, *the property of E. F., upon the high sea then being, unlawfully, maliciously, and feloniously did damage the said ship, by then and there* [state how, and show that it was done "otherwise than by fire"]; *with intent feloniously to destroy the said ship and vessel, and to render the same useless: against the form of the statute in such case made and provided. And you the said keeper*, &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 529.

Doing anything to cause shipwreck.] "Whosoever shall unlawfully exhibit any false light or signal, with intent to bring any ship or vessel into danger,—or shall unlawfully and

(*e*) *R.* v. *Wallace*, Car. & M. 200.
(*f*) 7 & 8 G. 4, c. 30, s. 27.
(*g*) 7 & 8 G. 4, c. 30, s. 10.

maliciously do anything tending to the immediate loss or destruction of any ship or vessel in distress:" felony, death (*a*).

Commitment for exhibiting a false light:—*On* ——, *at* ——, *whilst a certain ship was sailing on the high sea, near unto the said parish, unlawfully and feloniously did exhibit a false light, with intent thereby to bring the said ship into danger: against the form of the statute in such case made and provided. And you the said keeper*, &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 530.

Commitment for doing anything tending to the immediate loss of a ship in distress:—*On* ——, *at* ——, *whilst a certain ship was sailing on the high sea, near unto the said parish, and whilst the said ship was in distress, unlawfully, maliciously, and feloniously did* [state what was done by the prisoner] *the said* [act of the prisoner, stating it shortly,] *as aforesaid, then and there tending to the immediate loss and destruction of the said ship: against the form of the statute in such case made and provided. And you the said keeper*, &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 530.

Destroying wreck or goods belonging to it.] "Whosoever shall unlawfully and maliciously destroy any part of a ship or vessel which shall be in distress or wrecked, stranded or cast on shore, or any goods, merchandize or articles of any kind belonging to such ship or vessel:" felony, transportation for not more than fifteen years or less than ten, or imprisonment, with or without hard labour, for not more than three years (*b*).

Commitment:—*On* ——, *at* ——, *the hull of a certain ship, then and there stranded and cast ashore* [or as the case may be], *unlawfully, maliciously, and feloniously did destroy: against the form of the statute in such case made and provided. And you the said keeper*, &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 531.

Impeding a person saving himself from wreck.] "Whosoever shall by force prevent or impede any person endeavouring to save his life from any ship or vessel, which shall be in distress or wrecked, stranded or cast on shore (whether he shall be on board or shall have quitted the same):" felony, transportation for life or not less than fifteen years, or imprisonment, with or without hard labour, for not more than three years (*c*).

(*a*) 1 Vict. c. 89, s. 5.
(*b*) Id. s. 8.
(*c*) 1 Vict. c. 89, s. 7.

Commitment:—*On* ——, *at* ——, *feloniously and by force did prevent and impede a certain man unknown, whilst he the said man was then and there endeavouring to save his life from a certain ship, which was then and there stranded and cast on shore* [" in distress or wrecked, stranded, or cast on shore"] : *against the form of the statute in such case made and provided. And you the said keeper*, &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 532.

11. *Principals and Accessories.*

Accessories, &c., in indictable offences.] In felonies under these Acts, every principal in the second degree, and every accessory before the fact, shall be punishable in the same manner as the principal in the first degree; and every accessory after the fact, shall be imprisoned (with or without hard labour) for not more than two years;—and every person who shall aid, abet, counsel, or procure the commission of any misdemeanor punishable under this Act, shall be liable to be indicted and punished as the principal offender (*d*).

12. *Apprehension of Offenders.*

By whom and in what cases.] Any person found committing any offence against this Act, may be immediately apprehended without a warrant, by any peace officer, or the owner of the property injured, or his servant, or any person authorized by him, and forthwith taken before some neighbouring justice of the peace to be dealt with according to law (*e*).

MALTHOUSE.

See " Burning."

MANSLAUGHTER.

See " Homicide."

(*d*) 7 & 8 G. 4, c. 30, s. 26. 1 Vict. c. 89, s. 11.

(*e*) 7 & 8 G. 4, c. 30, s. 28. 1 Vict. c. 89, s. 11.

MANUFACTORIES.

See "Malicious Injuries."

MAYHEM.

Mayhem is such an injury to any part of a man's body, as may render him less able in fighting to defend himself, or to annoy his adversary (*a*). And, therefore, the cutting off or disabling or weakening a man's hand or finger, or striking out his eye or foretooth, or emasculating him, are said to be mayhems (*b*). But the cutting off his ear or nose were not holden to be mayhems at common law, because they did not disable or weaken a man, but merely disfigured him (*c*).

Mayhem, at common law, was punishable merely as a misdemeanor, with fine or imprisonment, or both. But now, if a man maliciously shoot at another, or stab, cut, or wound him, with intent to maim him, he is guilty of felony, and punishable with transportation (*d*); and the same, if in wounding him, he actually maim him; or if he wound and maim him, with intent to murder him, the offence is punishable with death (*e*).

MILL.

See "Malicious Injuries."

MILL-POND.

See "Malicious Injuries."

MINES.

See "Larceny," "Malicious Injuries."

(*a*) 1 Hawk. c. 44, s. 1.
(*b*) Id. s. 2.
(*c*) Id.
(*d*) *Ante*, p. 42.
(*e*) *Ante*, p. 40; and see *post*, tit. "*Smuggling.*" See the forms of commitment, *ante*, p. 44.

MISCARRIAGE.

See "Abortion."

MISFORTUNE, HOMICIDE BY.

See "Homicide."

MISNOMER.

Misnomer of a defendant in an indictment or information, was formerly deemed a serious defect: if a defendant were misnamed, or no addition, or a wrong one, given him, he might plead the matter in abatement; and if the issue thereupon were found for him, the indictment or information must have been quashed. But now by stat. 7 G. 4, c. 64, s. 19, no indictment or information shall be abated, by reason of any dilatory plea of misnomer, or want of addition, or of wrong addition of the party offering such plea; but in such case the court shall forthwith cause the indictment or information to be amended according to the truth, and shall call upon such party to plead thereto, and shall proceed as if no such dilatory plea had been pleaded. And no indictment shall be holden insufficient for want of or imperfection in the addition of any defendant (*a*).

MISPRISION OF TREASON OR FELONY.

Of treason.] Misprision of treason is, where a person, who is no party to an act of treason, knows of its being committed, and conceals it. This is a high crime and misdemeanor, punishable with imprisonment for life, forfeiture of the profits of the party's lands for life, and of his goods and chattels for ever (*b*).

(*a*) 14 & 15 Vict. c. 100, s. 24. (*b*) 3 Inst. 36.

Of felony.] Misprision of felony is, where a person who is no party to a felony, knows of its being committed, and conceals it. This is a misdemeanor, punishable in an ordinary person, with fine or imprisonment, or both; and in an officer, with imprisonment for a year, and ransom at the Queen's pleasure (*b*).

Helping to stolen property, without trial of the offender.] Every person who shall corruptly take any money or reward, directly or indirectly, under pretence or on account of helping any person to any chattel, money, valuable security or other property whatsoever, which shall, by any felony or misdemeanor, have been stolen, taken, obtained or converted, shall (unless he cause the offender to be apprehended and brought to trial for the same) be guilty of felony; and shall be transported for life or not less than seven years; or imprisoned (with or without hard labour) for not more than four years, and if a male, be once, twice or thrice publicly or privately whipped (if the court shall so think fit), in addition to such imprisonment (*c*).

Advertising a reward for stolen property.] If any person shall advertise a reward for the return of any property which shall have been stolen or lost, and shall in such advertisement use any words purporting that no questions will be asked,—or shall make use of any words in any public advertisement, purporting that a reward will be given or paid for any property which shall have been stolen or lost, without seizing or making any inquiry after the person producing such property,—or shall promise or offer in any such public advertisement to return to any pawnbroker or other person, who may have bought or advanced money by way of loan upon any property stolen or lost, the money so paid or advanced, or any other sum of money or reward for the return of such property,—or if any person shall print or publish any such advertisement in any of the above cases:—every such person shall forfeit the sum of 50*l.* for every such offence to any person who will sue for the same by action of debt (*d*).

MONEY.

See "Coin."

(*b*) 3 Inst. 36.
(*c*) 7 & 8 G. 4, c. 29, s. 58.
(*d*) 7 & 8 G. 4, c. 29, s. 59.

MORAVIAN.

See "Evidence."

MURDER.

See "Homicide."

MUTE.

See "Trial."

MUTINY, INCITING TO.

As to the punishment of mutiny itself by military law, see vol. 2, tit. "*Military Law*," p. 951.

And any person who shall maliciously and advisedly endeavour to seduce any person serving in Her Majesty's forces, by sea or land, from his duty and allegiance to Her Majesty, or to incite or stir up any such person to commit any act of mutiny, or to make or endeavour to make any mutinous assembly, or to commit any traitorous or mutinous practice whatsoever, shall be adjudged guilty of felony (*a*), and be transported for life or not less than fifteen years; or be imprisoned, with or without hard labour, for not more than three years, and the court may order the offender to be kept in solitary confinement, during any portion of his imprisonment, not exceeding a month at a time, and three months in any one year (*b*). The trial may be in any county (*c*).

A seaman belonging to the navy, being in a sick hospital, and therefore not entitled to pay, was holden to be a person serving in the King's forces by sea, within the meaning of this statute (*d*).

Commitment:—*On ——, at ——, maliciously, advisedly and feloniously did endeavour to seduce one C. D., who was then serving in Her Majesty's forces by land, from his duty*

(*a*) 37 G. 3, c. 70, s. 1.
(*b*) 1 Vict. c. 91, ss. 1, 2.
(*c*) 37 G. 3, c. 70, s. 2.
(*d*) *R.* v. *Tierny*, R. & Ry. 74.

and allegiance to Her Majesty [or as the case may be]: *against the form of the statute in such case made and provided. And you the said keeper*, &c.

NAVAL STORES.

See "Queen's Stores."

NAVIGABLE RIVER.

See "Larceny," "Malicious Injuries.

NIGHT POACHING.

See "Game."

NOTE.

See "Forgery," "Larceny."

NUISANCE.

Nuisance, what, and how punishable.] A nuisance is something done or omitted, which in its consequences is an annoyance, either to some individual in particular, or to all the Queen's subjects generally: the former is termed a private, the latter a public nuisance. As public nuisances alone, however, are the subject of criminal prosecution, we shall here confine our attention to them. Allowing a public highway or bridge to get out of repair, is a public nuisance, because it is an annoyance to all the Queen's subjects who may pass that way (*a*). So doing anything which may have the effect of

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(*a*) See *ante*, tit. "*Bridge*," and see vol. 1, tit. "*Highway*."

obstructing a public highway or navigable river, is a public nuisance for the same reason (*b*). Bawdy-houses, gaming-houses, and other disorderly houses, are also deemed common nuisances, from their baneful effects upon the morals of the people, and their tendency to attract numbers of disorderly persons (*c*). Erecting or keeping gunpowder mills or magazines near a town, is also a public nuisance, from the probable danger attending them (*d*). Offensive trades carried on to the annoyance, not merely of a few individuals (*e*), but of all persons in the neighbourhood or passing along the highways near them, are also public nuisances. Making loud noises in the night, with a speaking trumpet, to the disturbance of the neighbourhood, has also been deemed a public nuisance (*f*). So, exposing persons, on a public highway or place frequented by the public, who are infected with a contagious disease, such as the small-pox (*g*), or the like, is also a public nuisance. Where however a man was indicted for refusing and neglecting to bury the dead body of his child, whereby it became a nuisance to the neighbourhood, but it appeared that he was a pauper receiving parochial relief, and the guardians of the union refused to advance the money necessary for the burial except by way of loan, which the defendant refused: the court of Criminal Appeal held that under these circumstances the defendant was not indictable; he was not of ability to bury the child, and he was not bound to accept a loan to enable him to do so; if indeed he had the means of burying, and refused or neglected to do so, it would be otherwise (*h*). In our ancient text books it is said that a woman who is a common scold is a common nuisance, and indictable as such (*i*). These however are merely mentioned as instances; but there are an infinite variety of public nuisances, which it is impossible here to enumerate. Some of these which have now been noticed shortly, shall presently be treated of more in detail. There is one observation, however, applicable to all kinds of public nuisance, which should be here mentioned, namely, that their having existed for any length of time, however great, will not have the effect of legalizing them; no length of time will legalize a public nuisance (*k*).

Nuisance is a misdemeanor at common law, punishable with fine or imprisonment, or both; and if the nuisance be continuing when the judgment is given, the court may make it part of their judgment that the nuisance be abated.

(*b*) *Vide post*, p. 306.
(*c*) See *ante*, pp. 101, 186.
(*d*) 1 Russ. 297.
(*e*) *R.* v. *Lloyd*, 4 Esp. 200.
(*f*) *R.* v. *Smith*, 2 Str. 704.
(*g*) *R.* v. *Vantandillo*, 4 M. & S. 73. *R.* v. *Burnett*, Id. 272.
(*h*) *R.* v. *Vann*, 21 Law J. 39, m.
(*i*) 1 Hawk. c. 75, ss. 5, 14.
(*k*) *R.* v. *Cross*, 3 Camp. 227.

Nuisance to highways.] Allowing a public highway to be out of repair, is a nuisance for which an indictment will lie. This subject has already been fully considered, *ante*, vol. 1, tit. "*Highway.*"

Obstructing a public highway, is also a nuisance: as by digging a ditch or making a hedge across it (*l*), even although a part only, and not the whole of the breadth of the highway, be obstructed (*m*); erecting a gate across it, where none had previously been (*n*); sawing timber upon it (*o*); a brewer's servants occupying part of a street an unreasonable time, in putting beer into a publican's cellar (*p*); a carrier almost constantly loading his waggons in the street opposite to his warehouse (*q*); keeping stage coaches in a street, for a longer time than is necessary to load and unload them (*r*); setting persons in the footway for the purpose of distributing bills, if the way be thereby greatly obstructed (*s*); exhibiting effigies in a shop window, so as to attract great crowds, and thereby causing the footway to be greatly obstructed (*t*); running a railway along a common highway (*u*), unless authorized to do so by Act of parliament (*x*); suffering a house at a road-side to be ruinous, so as to be dangerous to the passengers (*y*): all these obstructions are nuisances, and punishable upon indictment. But merely holding a fair or market upon or adjoining to a highway, has been holden not to be a nuisance, where it was sanctioned by an uninterrupted custom of twenty years (*z*).

Nuisance to rivers.] A public navigable river is in law a public highway, and an obstruction to it is a public nuisance, and punishable by indictment. For instance, laying timber in such a river, so as to obstruct vessels in their passage, although the bed of the river be the party's own soil (*a*); erecting a wharf between high and low water mark (*b*); diverting a portion of it, so as to render the current less navigable (*c*); placing a floating-dock in it (*d*): all these and the like, are deemed public nuisances. In one case, the court of King's Bench (*dissent.* Ld. Tenterden, C. J.) held that erecting staithes at the side of a public river, and thereby narrowing it, was not a nuisance, the jury having found that

(*l*) 1 Hawk. c. 76, s. 144.
(*m*) Id. s. 145.
(*n*) Id. c. 75, s. 9.
(*o*) *R.* v. *Jones*, 3 Campb. 230.
(*p*) Id., per Ld. Ellenborough, C. J.
(*q*) *R.* v. *Russell*, 6 East, 427.
(*r*) *R.* v. *Cross*, 3 Campb. 224.
(*s*) *R.* v. *Sarmon*, 1 Burr. 516. See *R.* v. *Gill*, 1 Str. 190.
(*t*) *R.* v. *Carlile*, 6 Car. & P. 637.
(*u*) *R.* v. *Morris*, 1 B. & Ad. 441.
(*x*) See *R.* v. *Pease*, 4 B. & Ad. 30.
(*y*) 1 Hawk. c. 76, s. 147.
(*z*) *R.* v. *Smith*, 4 Esp. 109.
(*a*) Bac. Abr. Nuisance, A.
(*b*) *R.* v. *Ld. Grosvenor*, 2 Stark. 511. *R.* v. *Randall*, Car. & M. 496.
(*c*) 1 Hawk. c. 75, s. 11.
(*d*) Id.

the staithes were productive of a public benefit more than equivalent to the public injury occasioned by them (*e*); but this has since been overruled (*f*). Where however by accident or misfortune, a vessel is sunk in a navigable river, the owner is clearly not indictable, as for a nuisance, for the act was not voluntary upon his part (*g*). So, if the banks of such a river be obstructed, it is not a public nuisance, unless there be a public highway upon them; for the public are not entitled otherwise, at common law, to tow upon the banks of a navigable river (*h*). It may be necessary to add, that if a public navigable river change its course, the highway is thereafter in the new channel (*i*).

Nuisance to bridges.] Allowing a public bridge to be out of repair, is a public nuisance, punishable upon indictment (*k*). So, obstructing the way over or under it, or doing anything which has a direct tendency to injure it, is also a public nuisance (*l*).

Nuisance by carrying on an offensive trade.] Carrying on an offensive trade, which is an annoyance not merely to a few individuals (*m*), but to the whole neighbourhood, is also a public nuisance and punishable upon indictment. And therefore a manufactory, in which were made certain noisome and offensive liquors called acid spirit of sulphur, oil of vitriol, whereby the air was impregnated with very offensive smells, was holden to be a nuisance; and Ld. Mansfield, C. J., said that to constitute the offence, it was not necessary that the smell should be unwholesome, it was sufficient if it rendered the inhabitants in the neighbourhood and persons passing uncomfortable, and hindered their enjoying life and property as fully as they otherwise could (*n*). But either rendering the air unwholesome, or the houses uncomfortable or untenantable, will make such a trade a public nuisance (*o*). So, if the smells created by it be offensive to the senses, though not unwholesome, it will be a nuisance (*p*). An acquiescence by the neighbourhood for fifty years to a person's carrying on such a noxious trade, has been holden by Ld. Kenyon to be a good defence to an indictment for continuing it (*q*). And Lord Tenterden held that in such a case, if the party had extended his

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(*e*) *R.* v. *Russell*, 6 B. & C. 566.

(*f*) *R.* v. *Ward*, 4 Ad. & El. 384. See *R.* v. *Morris*, 1 B. & Ad. 441; and see *R.* v. *Tindall et al*, 6 Ad. & El. 143. *R.* v. *Randall*, *supra*.

(*g*) *R.* v. *Watts*, 2 Esp. 675.

(*h*) *Ball* v. *Herbert*, 3 T. R. 253.

(*i*) 1 Hawk. c. 76, s. 4.

(*k*) See *ante*, p. 54.

(*l*) See *R.* v. *Trafford*, 1 B. & Ad. 874.

(*m*) *R.* v. *Lloyd*, 4 Esp. 200.

(*n*) *R.* v. *White et al.*, 1 Burr. 333.

(*o*) *R.* v. *Davey*, 5 Esp. 217.

(*p*) *R.* v. *Neil*, 2 Car. & P. 485.

(*q*) *R.* v. *S. Neville*, Peake, 93.

works, but by reason of an improved mode of working not thereby added to the nuisance, he could not be indicted; although if he thereby added to it, it would be otherwise (*r*). It is said to have been decided that setting up such a noxious trade, in a neighbourhood where other such trades had long been borne with, was not indictable, unless the inconvenience to the public were thereby greatly increased (*s*). And if a party set up a noxious trade in a place remote from habitations and public highways, and afterwards new houses be built and new roads made near it, he may lawfully continue the business, although it in fact be a nuisance to the persons inhabiting the new houses, or passing along the new roads (*t*).

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 607.

Nuisance by steam-engines.] The furnaces of steam-engines, from being badly constructed or negligently used, may be public nuisances from the quantity of smoke and soot the chimneys emit. And by stat. 1 & 2 G. 4, c. 41, after reciting this, and that by law every such nuisance is abateable as such by indictment, enacts that the court in such a case may award costs to the prosecutor of such indictment, to be paid by the party convicted (*u*); and may also make an order for remedying the grievance by alteration of the furnace, before passing final sentence upon the defendant (*x*). But this Act is not to extend to furnaces of steam-engines, erected solely for the purpose of working mines, or in smelting or manufacturing ores or minerals adjoining to the premises where they are raised (*y*).

See stat. 16 & 17 Vict. c. 128, as to the summary remedy for the smoke nuisance from furnaces in the metropolis.

NURSERY GROUNDS.

See "Larceny," "Malicious Injuries."

(*r*) *R.* v. *Watts*, Moody & M. 281.
(*s*) *R.* v. *B. Neville*, Peake, 91.
(*t*) *R.* v. *Cross*, 2 Car & P. 483.
(*u*) 1 & 2 G. 4, c. 41, s. 1.
(*x*) Id. s. 2.
(*y*) Id. s. 3.

OATHS, UNLAWFUL.

Oath to commit treason or a capital felony.] Every person who shall, in any manner or form whatsoever, administer or cause to be administered, or be aiding or assisting at the administering of, any oath or engagement, purporting or intending to bind the person taking the same, to commit any treason or murder, or any felony punishable by law with death, shall, on conviction thereof, be adjudged guilty of felony (*a*), and be transported for life, or not less than fifteen years; or be imprisoned, with or without hard labour, for not more than three years, and the court may direct him to be kept in solitary confinement, for any portion of the time, not exceeding one month at a time, or three months in any one year (*b*).

Commitment:—*On* ——, *at* ——, *feloniously did administer unto one C. D. a certain oath, purporting and intending to bind the said C. D. to commit treason, by* [*traitorously compassing and imagining the death of our sovereign Lady the Queen*, or as the case may be] : *against the form of the statute in such case made and provided. And you the said keeper*, &c.

The offence may be tried before a court of oyer and terminer or gaol delivery in any county in England, as if the offence were committed there (*c*).

Oath to engage in any mutinous or seditious purposes, &c.] Any person who shall, in any manner or form whatsoever, administer or cause to be administered, or be aiding or assisting at, or present at and consenting to, the administering or taking of any oath or engagement, purporting or intended to bind the person taking it to engage in any mutinous or seditious purpose,—or to disturb the public peace,—or to be of any association, society or confederacy formed for any such purpose, —or to obey the orders or commands of any committee or body of men not lawfully constituted, or of any leader or commander, or other person not having authority by law for that purpose,—or not to inform or give evidence against any associate, confederate, or other person,—or not to reveal or discover any unlawful combination or confederacy,—or not to

(*a*) 52 G. 3, c. 104, s. 1.
(*b*) 1 Vict. c. 91, ss. 1, 2.
(*c*) 52 G. 3, c. 104, s. 8.

reveal or discover any illegal act done or to be done;—or not to reveal or discover any illegal oath or engagement, which may have been administered or tendered to, or taken by such person, or to or by any other person, or the import of any such oath or engagement: felony, transportation for not more than seven years;—and every person who shall take any such oath or engagement, not being compelled thereto,—the like punishment (*d*). Persons causing such oath to be administered, though not present at the time, to be deemed principals (*e*).

And persons compelled to take such oath shall not be justified or excused, unless within four days after taking the same, if not prevented by actual force or sickness, or if so prevented, then within four days after the force, &c. shall cease, he shall declare the same and the whole of what he shall know concerning the same, the persons by whom and in whose presence, and when and where the oath was administered, by information before a justice of the peace (*f*).

The statute is not confined to oaths for a mutinous or seditious purpose; where several persons, about to go armed for the purpose of night poaching, were sworn to secrecy, it was holden to be a case within the Act (*g*). Where the oath bound the party not to make buttons under a certain price, and to keep all the secrets of the lodge, it was holden to be within the Act (*h*). And in all cases, where the members of an association are bound by oath to secrecy, they come within the Act (*i*). It is immaterial in what form the oath may be framed (*k*); or whether the party be sworn on the Testament or not, if he believe himself to be bound by the oath administered (*l*).

The offence may be tried before a court of oyer and terminer or gaol delivery in any county in England, in the same manner as if it were committed there (*m*).

Commitment:—*On* ——, *at* ——, *feloniously did administer unto one C. D. a certain oath, purporting and intended to bind the said C. D. to engage in certain mutinous and seditious purposes* [or as the case may be]: *against the form of the statute in such case made and provided. And you the said keeper*, &c.

(*d*) 37 G. 3, c. 123, s. 1.
(*e*) Id. s. 3.
(*f*) Id. s. 2.
(*g*) *R.* v. *Brodribb*, 6 Car. & P. 571.
(*h*) *R.* v. *Ball*, 6 Car. & P. 563.
(*i*) Id. *R.* v. *Loveless*, 1 Moody & R. 349; 6 Car. & P. 596.
(*k*) Id.
(*l*) *R.* v. *Brodribb*, *supra*.
(*m*) 37 G. 3, c. 123, s. 6.

OBLITERATING RECORDS.

See "Larceny."

OBSCENE BOOKS OR PRINTS.

See "Indecency."

OBTAINING MONEY BY FALSE PRETENCES.

See "False Pretences."

OFFICE, BUYING OR SELLING.

Buying or selling offices.] If any person shall sell, or bargain for the sale of, or receive, have or take any money, fee, gratuity, loan of money, reward or profit, directly or indirectly, or any promise, agreement, covenant, contract, bond or assurance, or shall by any way, device or means, contract or agree to receive or have any money, fee, gratuity, loan of money, reward or profit, directly or indirectly,—or if any person shall purchase, or bargain for the purchase of, or give or pay any money, fee, gratuity, loan of money, reward or profit, or make or enter into any promise, agreement, covenant, contract, bond or assurance to give or pay any money, fee, gratuity, loan of money, reward or profit, or shall by any way, means or device, contract or agree to give or pay any money, fee, gratuity, loan of money, reward or profit, directly or indirectly, for any office, commission, place or employment, specified in stat. 5 & 6 Ed. 6, c. 16, s. 2, or this Act, or within the meaning of either, or for any deputation thereto, or for any part or participation of the profits thereof, or for any appointment thereto or resignation thereof, or for the consent or voice of any person to any such appointment;— then every such person, and also he who shall wilfully and know-

ingly aid, abet or assist such person therein, shall be adjudged guilty of a misdemeanor (*a*).

The offices specified in stat. 5 & 6 Ed. 6, c. 16, s. 2, are, offices which concern the administration of justice,—or the receipt, controlment or payment of any of the king's treasure, money, rent, revenue, account, aulnage, auditorship, or surveying of any of the king's honours, castles, manors, lands, tenements, woods or hereditaments,—or his Majesty's customs, or any other administration or necessary attendance to be had, done or executed in any of the king's custom-houses,—or the keeping of any of the king's towers, castles or fortresses, being used, occupied or appointed for a place of strength or defence,—or which shall concern any clerkship to be occupied in any manner of court of record wherein justice is to be administered.

The offices specified in stat. 49 G. 3, c. 126, are—all offices in the gift of the crown, or of any office appointed by the crown,—all commissioners, civil, naval or military,—all places and employments, and all deputations to any such offices, commissions, places or employments, in the respective departments or offices, or under the appointment or superintendence or control of the lord high treasurer or commissioners of the treasury, the secretary of state, the lords of the admiralty, the master-general and principal officers of the ordnance, the commander-in-chief, the secretary-at-war, the paymaster-general of the forces, the commissioners for the affairs of India, the commissioners of the excise, the treasurer of the navy, the commissioners of the navy, the commissioners for victualling, the commissioners of transports, the commissary-general, the storekeeper-general, and the principal officers of any other public department or office of the government,—and also all offices, commissions, places and employments belonging to or under the appointment or control of the East India Company.

But stat. 5 & 6 Ed. 6, c. 16, does not extend to offices whereof any person is seised of any estate of inheritance (*b*); nor to offices in the gift of the chief justices of the King's Bench or Common Pleas, or of the justices of assize (*c*).

Nor does the stat. 49 G. 3, c. 126, extend to any lawful deputations, where the payment of principal or deputy is out of fees (*d*); nor to the sale of commissions in the army, at the regulated prices (*e*). But it has been holden that an appointment to a cadetship in the service of the East India Company, is an "office, commission, place and employment" within the meaning of the statute, and that the offence is com-

(*a*) 49 G. 3, c. 126, s. 3.
(*b*) 5 & 6 Ed. 6, c. 16, s. 4.
(*c*) Id. s. 5.
(*d*) 49 G. 3, c. 126, s. 10.
(*e*) Id. s. 7, and see sect. 8.

plete on the party's being nominated, although in fact he do not receive any commission or appointment until his arrival in India (*f*).

Soliciting office, for money.] If any person shall receive, have or take any money, fee, reward or profit, directly or indirectly, or take any promise for money, &c., for any interest, solicitation, petition, request, recommendation or negotiation whatever, made or to be made, or pretended to be made, or under any pretence of making or procuring to be made any interest, &c., in or about or in anywise touching the nomination, appointment or deputation to or resignation of any such office,—or if any person shall give or pay money for such promise, &c.,—or if any person for or in expectation of any gain or fee, &c., solicit, recommend or negotiate in anywise touching such nomination, &c.: — misdemeanor (*g*). Keeping or advertising places for transacting such negotiations, is likewise a misdemeanor (*h*).

OFFICE, REFUSING TO EXECUTE.

Where a man is regularly appointed to a public office, such as that of overseer of the poor, chief or petty constable, or the like, and has no legal exemption from service, if after having due notice of his appointment, he refuse to execute the office, he will be guilty of misdemeanor at common law, and be punishable with fine or imprisonment, or both (*a*).

OFFICER, ASSAULTING.

See "Assault."

ORCHARD.

See "Larceny," "Malicious Injuries."

(*f*) *R.* v. *Charette et al.*, 18 Law J. 100, m.

(*g*) 49 G. 3, c. 126, s. 4.

(*h*) Id. s. 5.

(*a*) See *R.* v. *Harpur*, 5 Mod. 95. *R.* v. *Burder*, 4 T. R. 778. *R.* v. *Poynder*, 1 B. & C. 178. *R.* v. *Mosley*, 5 Nev. & M. 261.

ORDER OF JUSTICES, DISOBEYING.

Where an order of a justice or justices, legally made, requires a person to do any certain act, and upon being personally served with the order, and required to do the act, he refuse or neglect to do it: this is a misdemeanor at common law, punishable upon indictment by fine, or imprisonment or both. And where a soldier was indicted for not obeying a bastardy order, the court held that he was not protected from punishment by the Annual Mutiny Act; for the disobedience was a criminal matter, and for criminal matter soldiers are expressly made liable by that Act (*a*). The offence however is also often made punishable, in particular cases, upon summary conviction, by the statute under which the order is made.

ORE.

See "Larceny."

OYSTERS.

See "Larceny."

PAPER FOR BANK NOTES.

See "Forgery."

PARDON.

See "Trial."

PARISH REGISTER.

See "Forgery," "Register."

(*a*) *R.* v. *Ferrall*, 20 Law J. 39, m.

PARLIAMENT.

False answers by voters at elections.] At an election for a member to serve in parliament, the only questions the returning officer or his deputy can put to an elector, at the time of tendering his vote, are:—

1. "Are you the same person whose name appears as A. B. on the register of voters now in force for the county of ——," [*or* for the —— riding, parts *or* division, &c., *or* for the city, &c., *as the case may be*].

2. "Have you already voted, either here or elsewhere, at this election for the county of ——," [*or* for the —— riding, parts *or* division of the county of ——, *or* for the city *or* borough of ——, *as the case may be*].

And if any person shall wilfully make a false answer to either of the questions aforesaid, he shall be deemed guilty of a misdemeanor, and shall and may be indicted and punished accordingly (*a*).

Commitment:—*On* ——, *at* ——, *at an election then and there holden for members to serve in parliament for the* [*county*] —— *aforesaid, on tendering his vote as a voter at the said election, being then and there asked by C. D., the deputy of the returning officer, the following question:* ——, *then and there unlawfully and wilfully did falsely answer* ——: *against the form of the statute in such case made and provided. And you the said keeper*, &c.

Personating voters.] If at any election of a member or members to serve in parliament for any county, city, or borough, any person shall knowingly personate and falsely assume to vote in the name of any other person whose name appears on the register of voters then in force for any such county, city, or borough, whether such other person shall then be living or dead, or if the name of the said other person be the name of a fictitious person, every such person shall be guilty of a misdemeanor, and on being convicted thereof shall be punished by imprisonment for a term not exceeding two years, together with hard labour (*b*).

And every person who shall aid, abet, counsel, or procure the commission of any such last-mentioned misdemeanor,

(*a*) 6 & 7 Vict. c. 18, s. 81. See *R.* v. *Harris*, 7 Car. & P. 253.

(*b*) 6 & 7 Vict. c. 18, s. 83.

shall be liable to be indicted and punished as a principal offender (*c*).

If at the time any person tenders his vote at such election, or after he has voted, and before he leaves the polling booth, any agent of a candidate shall declare to the returning officer, or his respective deputy, presiding therein, that he verily believes, and undertakes to prove, that the said person so voting is not in fact the person in whose name he assumes to vote, or to the like effect, then and in every such case it shall be lawful for the said returning officer, or his said deputy, and he is hereby required, immediately after such person shall have voted, by word of mouth to order any constable or other peace officer to take the said person so voting into his custody, which said order shall be a sufficient warrant and authority to the said constable or peace officer for so doing: provided always, that nothing herein contained shall be construed or taken to authorize any returning officer or his deputy, to reject the vote of any person who shall answer in the affirmative the questions authorized by this Act to be put to him at the time of polling, and shall take the oaths or make the affirmations authorized and required of him; but the said returning officer, or his deputy, shall cause the words, "protested against for personation," to be placed against the vote of the person so charged with personation when entered in the poll book (*d*).

And every such constable or peace officer shall take the person so in his custody, at the earliest convenient time, before some two justices of the peace acting in and for the county, city, or borough within which the said person shall have so voted as aforesaid: provided always, that in case the attendance of two such justices as aforesaid cannot be procured within the space of three hours after the close of the poll on the same day on which such person shall have been so taken into custody, it shall be lawful for the said constable or peace officer, and he is hereby required, at the request of such person so in his custody, to take him before any one justice of the peace acting as aforesaid, and such justice is hereby authorized and required to liberate such person on his entering into a recognizance with one sufficient surety, conditioned to appear before any two such justices as aforesaid, at a time and place to be specified in such recognizance, to answer the said charge; and if no such justice shall be found within four hours after the closing of the said poll, then such person shall forthwith be discharged from custody; provided also, that if in consequence of the absence of such justices as aforesaid, or for any other cause, the said charge cannot be inquired into within the

(*c*) 6 & 7 Vict. c. 18, s. 84. (*d*) Id. s. 86.

time aforesaid, it shall be lawful nevertheless for any two such justices as aforesaid to inquire into the same on the next or on some other subsequent day, and, if necessary, to issue their warrant for the apprehension of the person so charged (*e*).

If on the hearing of the said charge the said two justices shall be satisfied, upon the evidence on oath of not less than two credible witnesses, that the said person so brought before them has knowingly personated and falsely assumed to vote in the name of some other person within the meaning of this Act, and is not in fact the person in whose name he voted, then it shall be lawful for the said two justices to commit the said offender to the gaol of the county, city, or borough within which the offence was committed, to take his trial according to law, and to bind over the witnesses in their respective recognizances to appear and give evidence on such trial as in the case of other misdemeanors (*f*).

But if the said justices shall, on the hearing of the said charge, be satisfied that the said person so charged with personation is really and in truth the person in whose name he voted, and that the charge of personation has been made against him without reasonable or just cause, or if the agent so declaring as aforesaid, or some one on his behalf, shall not appear to support such charge before the said justices, then it shall be lawful for the said justices and they are hereby required to make an order in writing under their hands, on the said agent so declaring as aforesaid, to pay to the said person, so falsely charged, if he shall consent to accept the same, any sum not exceeding the sum of 10*l*., nor less than 5*l*., by way of damages and costs; and if the said sum shall not be paid within twenty-four hours after such order shall have been made, then the same shall be levied, by warrant under the hand and seal of any justice of the peace acting as aforesaid, by distress and sale of the goods and chattels of the said agent; and in case no sufficient goods or chattels of the said agent can be found on which such levy can be made, then the same shall be levied in like manner on the goods and chattels of the candidate by whom such agent was so appointed to act; and in case the said sum shall not be paid or levied in the manner aforesaid, then it shall be lawful for the said person to whom the said sum of money was so ordered to be paid to recover the same from the said agent or candidate, with full costs of suit, in an action of debt to be brought in any one of Her Majesty's superior courts of record at Westminster: provided always, that if the person so falsely charged shall have declared to the said justices his consent to accept such sum as aforesaid by way of damages and costs, and if the whole amount of

(*e*) 6 & 7 Vict. c. 18, s. 87. (*f*) Id. s. 88.

the sum so ordered to be paid shall have been paid or tendered to such person, in every such case, but not otherwise, the said agent, candidate, and every other person shall be released from all actions or other proceedings, civil or criminal, for or in respect of the said charge and apprehension (*g*).

PEERS.

Peers and peeresses, if charged with treason, felony, or misprision of treason or felony, must be tried by their peers; but if charged with a misdemeanor, they may be tried by a jury (*h*). In the latter case, the proceedings are exactly the same as in ordinary cases; in the former, the proceedings are also the same, to the finding of the indictment inclusive, but they are then removed by *certiorari* to the house of peers, and the trial had there. As to the trial of peers for treason, felony, or misprision of either, committed in Scotland, see stat. 6 G. 4, c. 66; and as to the trial of Irish peers, see stat. 39 & 40 G. 3, c. 67, art. 4, and 6 G. 4, c. 66, s. 13.

If it be intended to prefer articles of the peace against a peer or peeress, it should be done in the court of Queen's Bench or court of Chancery (*i*).

PERJURY AND SUBORNATION.

At common law.] Perjury is the wilful taking of a false oath [or affirmation], in some judicial proceeding, before a person having competent authority to administer it, and in a matter material to the point then in question (*a*). It must be wilful: for if a man swear falsely from inadvertence or mistake, it is no offence (*b*). It must be taken in some judicial proceeding, otherwise it is not perjury (*c*), unless made so by some particular statute; but it is immaterial whether the court before which it is taken be a court of record or not (*d*), provided it

(*g*) 6 & 7 Vict. c. 18, s. 89. See *R.* v. *Spalding*, Car. & M. 568.
(*h*) 2 Hawk. c. 44, s. 12, &c.
(*i*) 1 Hawk. c. 60, s. 5.
(*a*) See 3 Inst. 164.
(*b*) 1 Hawk. c. 69, s. 2.
(*c*) 3 Inst. 166; and see *R.* v. *Bishop*, Car. & M. 302. *R.* v. *Ewington*, Id. 319. *R.* v. *Overton*, 12 Law J. 61, m. *R.* v. *Hughes*, 1 Car. & K. 519.
(*d*) 2 Russ. 519.

have jurisdiction of the matter in issue (*e*). It must be taken before a person having competent authority by law to administer it, otherwise it is no offence (*f*). It must be material to the subject then under consideration, otherwise it does not amount to the offence of perjury (*g*). And lastly, the matter sworn, or some part of it, must be false: or if a man swear to a fact, which happens to be true, but of which he has no knowledge whatever at the time he swears to it, it is equally perjury (*h*). A false oath to obtain a marriage licence, is not perjury; but the party may be indicted as for a misdemeanor at common law (*i*).

It may be necessary to mention, that perjury and subornation are not within the jurisdiction of the quarter sessions (*k*).

Subornation of perjury, is procuring a man to take a false oath, amounting to perjury (*l*).

Perjury and subornation are misdemeanors, and punishable equally with transportation for seven years, or imprisonment and hard labour in the house of correction for not more than seven years (*m*). Soliciting a person to commit perjury which he does not afterwards commit, is a misdemeanor, punishable with fine or imprisonment, or both.

Under stat. 5 *Eliz.* c. 9.] Every person who shall unlawfully and corruptly procure any witness, by letters, rewards, promises, or by any other sinister and unlawful labour or means whatsoever, to commit any wilful and corrupt perjury, in any matter or cause depending in suit by any writ, action, bill, complaint or information, in anywise concerning any lands, tenements or hereditaments, or any goods, chattels, debts, or damages in the court of Chancery, or in any of the Queen's courts of record, or in any leet, hundred court, court baron, or in the courts of the stannary in Devon and Cornwall;—or shall unlawfully and corruptly procure or suborn any witness, who shall be sworn to testify *in perpetuum rei memoriam*:—he shall forfeit forty pounds (*n*); and may be transported for seven years, or imprisoned and kept to hard labour for not more than seven years (*o*); and shall never afterwards be received as a witness, until the judgment be reversed (*p*).

(*e*) 2 Russ. 520. See *R.* v. *Cook*, *R.* v. *Hickling*, 21 Law J. 136, m. *Lavey* v. *R.*, 21 Law J. 10, m.

(*f*) 1 Hawk. c. 69, s. 4. See *Dunn* v. *R.*, 18 Law J. 41, m. *R.* v. *Hallett*, 20 Law J. 197, m. *R.* v. *Stone*, 23 Law J. 14, m.

(*g*) 3 Inst. 167; and see *R.* v. *Overton*, Car. & M. 655, *R.* v. *Philpotts*, 21 Law J. 18, m.

(*h*) 1 Hawk. c. 69, s. 6.

(*i*) *R.* v. *Chapman*, 18 Law J. 152, m.

(*k*) *Post*, p. 358.

(*l*) 1 Hawk. c. 69, s. 9.

(*m*) 2 G. 2, c. 25, s. 2.

(*n*) 5 Eliz. c. 9, s. 3.

(*o*) 2 G. 2, c. 25, s. 2.

(*p*) 5 Eliz. c. 9, s. 5.

And if any person wilfully and corruptly commit wilful perjury, by his deposition in any of the courts before mentioned, or being examined *in perpetuam rei memoriam:* penalty twenty pounds (*q*); and transportation or imprisonment and hard labour as above mentioned (*r*); and he shall not afterwards be received as a witness until the judgment be reversed (*s*).

The offender cannot be tried at the quarter sessions (*t*).

Commitment.] Commitment for perjury, either at common law or under the statute:—

On ——, at ——, in his evidence as a witness at the trial of a cause at ——, before ——, wherein A. B. was plaintiff, and C. D. defendant, [or *in a certain affidavit, made and sworn to by him before* ——, or as the case may be,] *falsely, wickedly, wilfully, and corruptly did commit wilful and corrupt perjury. And you the said keeper,* &c. (*u*).

Commitment for subornation:—*On ——, at ——, unlawfully, corruptly, wickedly and maliciously, did suborn and procure C. D. to commit wilful and corrupt perjury, on ——, at ——, in his evidence,* &c., as above.

It may be necessary to mention that in R. *v.* Bartlett, *supra,* Wightman, J., held that a justice of the peace had no jurisdiction to commit to prison, for perjury at common law. But he has jurisdiction now by stat. 11 & 12 Vict. c. 42. Where an application was made to justices to commit a party for perjury, and the justices refused to interfere, because the alleged perjury was committed in suit in the ecclesiastical court which was still pending: the court refused a *mandamus* to compel them (*x*).

See the form of an indictment for perjury, and the evidence necessary to support it, *Arch. New Cr. Law,* 591. As to an indictment for subornation, see stat. 14 & 15 Vict. c. 100, s. 21.

(*q*) 5 Eliz. c. 9, s. 5.
(*r*) 2 G. 2, c. 25, s. 2.
(*s*) 5 Eliz. c. 9, s. 6.
(*t*) *Post,* p. 358.
(*u*) Se *R.* v. *Hulme,* 7 Car. & P. 8. *R.* v *Bartlett,* 12 Law J. 127, m.
(*x*) *R.* v. *Ingham et al.,* 19 Law J. 69, m.

PERSONATING.

Personating soldiers or seamen, &c.] "Whosoever shall willingly and knowingly personate or falsely assume the name or character of any officer, soldier, seamen, marine, or other person entitled or supposed to be entitled to any wages, pay, pension, prize money, or other allowances of money for service done in his Majesty's army or navy,—or shall personate or falsely assume the name or character of the executor or administrator, wife, relation or creditor of any such officer or soldier, seaman, marine, or other person,—in order fraudulently to receive any wages, pay, pension, prize money, or other allowances of money due, or supposed to be due, for or on account of the services of any such officer or soldier, seaman or marine, or other person:"—transportation for life, or not less than seven years, or imprisonment, with or without hard labour, for not more than seven years (*a*).

In order to bring a case within this statute, it must appear that there was such a person in the ship, &c. as was attempted to be personated (*b*). But it will be no answer to say that the party was actually dead at the time (*c*). If one person be present, aiding and abetting another in the personation, both may be committed (*d*).

Commitment:—*On ——, at ——, willingly, knowingly and feloniously did personate one C. D., a seaman then and there entitled to certain prize money, for service by him the said C. D. before then done in Her Majesty's navy, in and on board of a certain ship and vessel called the ——, in order then and there fraudulently to receive the said prize money then due for and on account of the services of the said C. D. in Her said Majesty's navy as aforesaid: against the form of the statute in such case made and provided. And you the said keeper*, &c.

Personating or forging the names of officers, &c. in the army.] By stat. 7 G. 4, c. 16, s. 38, "if any person shall

(*a*) 5 G. 4, c. 107, s. 5.
(*b*) *R.* v. *Brown*, 2 East, P. C. 1007. *R.* v. *Tunnett*, R. & Ry. 251.
(*c*) *R.* v. *Martin*, R. & Ry. 324. *R.* v. *Cramp*, Id. 327.
(*d*) *R.* v. *Potts*, R. & Ry. 353.

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willingly and knowingly personate or falsely assume the name or character, or procure any other to personate or falsely assume the name or character of any officer, non-commissioned officer, soldier, or other person, entitled or supposed to be entitled to any pension, wages, pay, grant, or other allowance of money, prize money, or relief, due or payable, or supposed to be due or payable, for or on account of any service done or supposed to be done by any such officer, non-commissioned officer, soldier or other person as aforesaid, in his Majesty's army, or other military service, or shall personate or falsely assume the name or character of the executor or administrator, wife, relation or creditor of any such officer, non-commissioned officer or soldier, or other person as aforesaid, in order fraudulently to receive any pension, wages, pay, grant, or other allowance of money, prize money, or relief due or payable, or supposed to be due or payable, for or on account of any services done or supposed to be done by any such officer, non-commissioned officer, soldier, or other person as aforesaid;—or if any person shall forge or counterfeit or alter, or cause or procure to be forged, counterfeited or altered, or knowingly and willingly act, aid or assist in forging, counterfeiting or altering the name or handwriting of any officer, non-commissioned officer, soldier, or other person entitled or supposed to be entitled to any pension, wages, pay, grant, allowance of money, prize money, or relief, due or payable, or supposed to be due or payable, for or on account of any such service, or supposed service as aforesaid, or the name or handwriting of any officer, under officer, clerk or servant of the said commissioners of the said hospital at Chelsea, or of any officer or person in any way concerned in the paying or ordering, directing or causing the payment of the said pensions, wages, pay, money, allowance of money, prize money, or relief, or any of them;—or shall willingly act, aid or assist in forging, counterfeiting, or altering any letter of attorney, bill, ticket, order, certificate, voucher, receipt, will, or any other power, instrument, warrant, document or authority whatsoever, relating to or in anywise concerning the payment, or obtaining or claiming any pension, wages, pay, grant, allowance of money, prize money, or relief, for and in order to the receiving, obtaining or claiming any such pension, wages, pay, grant, allowance of money, prize money, or relief;—or shall utter or publish as true, or knowingly and willingly act, aid or assist in uttering or publishing as true, knowing the same to be forged, counterfeited or altered, any such letter of attorney, bill, ticket, order, certificate, voucher, receipt, will, or any other power, instrument, warrant, document or authority whatsoever, with intent to obtain the payment of any such pension, wages, pay, money, or allowance of money, prize money, or relief, from the said commissioners of the said hos-

pital at Chelsea, or from any officer, under officer, clerk or servant of the said commissioners, or from the person authorized or supposed to be authorized to pay the same, or with intent to defraud any person whatsoever, or any corporation whatsoever;—every such person so offending, being thereof lawfully convicted, shall be and is hereby declared and adjudged to be guilty of felony, and shall and may be transported for life, or for such term of years as the court shall adjudge."

And in a case where a man forged the name of a pensioner, who was dead at the time, it was holden to be an offence within this Act (*f*).

The commitment for personating, may readily be framed from the form, *ante*, p. 321; that for forgery, may be framed from the form, *ante*, p. 165.

Personating in other cases.] As to personating bail, or acknowledging any recognizance, fine, recovery, cognovit, judgment or deed enrolled, in the name of another, see *ante*, p. 177. And as to personating the proprietor of any public stock or funds, see *ante*, p. 176. And as to personating votes at an election for members of parliament, see *ante*, p. 315.

PIGEONS.

See "Larceny."

PIRACY.

Piracy at common law.] Piracy is a taking and carrying away of money or goods from another, upon the high seas, without the authority of any prince or state, by violence and putting the party in fear. There must be a taking and carrying away, as in larceny (*a*); it must be upon the high seas, within the jurisdiction of the admiralty (*b*); it must be done without the authority of any prince or state, for a nation can-

(*f*) *R.* v. *Pringle*, 9 Car. & P. 408.

(*a*) See *ante*, pp. 222, 231.

(*b*) See *ante*, p. 12.

not be deemed pirates: and it must be effected by violence and putting the party in fear, precisely as in robbery (*c*).

Piracy was formerly punishable with death, by 28 H. 8, c. 15, s. 3. But that statute has been repealed by stat. 1 Vict. c. 88, s. 1, and it is now somewhat uncertain in what manner piracy at common law is punishable. Before the stat. 28 H. 8, c. 15, it was punishable in the same manner as petit treason; and would now perhaps in all cases be punishable with death, but that by stat. 7 & 8 G. 4, c. 28, all offences prosecuted in the high court of admiralty (one of which is piracy) are punishable in the same manner as if committed upon land; and as piracy is the same offence as robbery upon land, it should seem that it is now punishable in the same manner (*d*). But if, with intent to commit piracy, or immediately before or after committing it, the party assault any person on board the ship with intent to murder him, or if he cut or wound him, or do any act by which his life may be endangered: the offence is then felony, death (*e*).

Commitment:—*On ——, upon the high sea, on board of a certain ship called ——, near the [coast of Africa] then being, in and upon one C. D. and E. F. piratically and feloniously did make an assault, and them the said C. D. and E. F. in bodily fear and danger of their lives on the high sea aforesaid then and there piratically and feloniously did put, and the said ship and the apparel and tackle thereof of the value of ——, and one hundred and fifty bales of silk of the value of ——, in and on board of the said ship then being, of the goods and chattels of certain subjects of our Lady the Queen [unknown], and then and there being in the custody and possession of the said C. D., then and there on the high sea, piratically, feloniously and violently did steal, take and carry away; [and that the said A. B. immediately before committing the piracy aforesaid, did then and there on the high sea, on board of the said ship, feloniously stab, cut and wound the said C. D.;] against the form of the statute in such case made and provided. And you the said keeper*, &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 481.

Piracy by statute.] The following offences have been declared or made piracy by statute, and were formerly punishable with death: but by stat. 1 Vict. c. 88, s. 3, they are now punishable with transportation for life or not less than fifteen years,—or with imprisonment for not more than three years (*f*), with or without hard labour, and with or without

(*c*) See *ante*, p. 252.
(*d*) See *ante*, p. 15.
(*e*) 1 Vict. c. 88, s. 2.
(*f*) Id.

solitary confinement for a portion of the time, not exceeding a month at a time and three months in any one year (*g*).

1. Robbery or any other act of hostility by the King's subjects, under colour of a commission from the King's enemies (*h*).

2. Master or seamen turning pirates, and running away with the ship or any boat or goods, &c.; or yielding them up voluntarily to a pirate; or inciting a master or seaman to turn pirate, or to run away with, or yield up, his ship or cargo, &c. to pirates; or a seaman laying violent hands on his commander, to prevent him from defending the ship or goods; or confining the master, or endeavouring to make a revolt in the ship (*i*).

3. Forcibly boarding a ship or vessel and throwing overboard or destroying goods belonging to it (*k*).

4. Trading with pirates, or furnishing them with ammunition, provision, &c., or fitting out a ship for that purpose (*l*).

Principals and accessories.] In all of the above offences punishable under stat. 1 Vict. c. 88, every principal in the second degree, and every accessory before the fact, are punishable in the same manner as principals in the first degree; and accessories after the fact are punishable with imprisonment for not more than two years (*m*), with or without hard labour, and solitary confinement for any portion of the time, not exceeding a month at a time, or three months in any one year (*n*).

PLANTATION.

See "Burning."

PLANTS.

See "Larceny," "Malicious Injuries."

PLATES FOR BANK NOTES.

See "Forgery."

(*g*) 1 Vict. c. 88, s. 5.
(*h*) 11 & 12 W. 3, c. 7, s. 8. 18 G. 2, c. 30, s. 1.
(*i*) 11 & 12 W. 3, c. 7, s. 9.
(*k*) 8 G. 1, c. 24, s. 1.
(*l*) 8 G. 1, c. 24, s. 1. And see 22 & 23 C. 2, c. 11.
(*m*) 1 Vict. c. 88, s. 4.
(*n*) Id. s. 5.

PLEA.

See "Trial."

PLEDGING GOODS BY A FACTOR.

See "Agent."

PLUNDERING WRECK.

See "Larceny," "Malicious Injuries."

POACHING.

See "Game."

POISON.

See "Homicide."

POLYGAMY.

See "Bigamy."

POST OFFICE.

1. *Offences with respect to Letters.*

Stealing or embezzling letters.] Every person employed under the post office, who shall steal, or shall for any purpose whatever embezzle, secrete, or destroy a post letter: felony, transportation for seven years, or imprisonment, [with or without hard labour and solitary confinement (*a*)], for not more than three years; and if any such letter so stolen or embezzled, secreted or destroyed, shall contain therein any chattel or money whatsoever, or any valuable security, every such offender shall be transported beyond the seas for life (*b*). Where a person, whilst engaged in gratuitously assisting a postmaster at his request in sorting letters, stole one of them, he was holden to be indictable under this section, as a person employed under the post office (*c*).

Where a sorter of letters at the post office made a mistake as to two letters in sorting the parcel in which they were, and in order to avoid the penalty attached to such a mistake, he took these two letters to the water-closet and put them in, but before they escaped from the pan, he was apprehended, and the letters were found in the pan still sealed and unopened: being indicted on this statute for stealing the letters, with a count for secreting them, the jury found the facts as above mentioned; and the case being reserved for the opinion of the judges of the criminal appeal court, they held that the defendant was clearly guilty of secreting the letters, and they thought that the facts found amounted to larceny also (*d*).

Commitment:—*On ——, at ——, being then a person employed under the post office, a certain letter, the property of ——, receiver-general of the general post office, London, feloniously did steal, take, and carry away: against the form of the statute in such case made and provided. And you the said keeper*, &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 578.

(*a*) 1 Vict. c. 36, s. 42.

(*b*) Id. s. 26. See *R.* v. *Gardner*, 1 Car. & K. 628.

(*c*) *R.* v. *Reason*, 23 Law J. 11, m.

(*d*) *R.* v. *Wynn*, 2 Car. & K. 859.

And every person who shall steal a post letter bag, or a post letter from a post letter bag,—or shall steal a post letter from a post office, or from an officer of the post office or from a mail,—or shall stop a mail with intent to rob or search the same: felony, transportation for life (*b*), or not less than seven years, or imprisonment with or without hard labour and solitary confinement, for not more than four years (*c*).

Where a person being about to engage A. as a servant, and being referred to B. for a character wrote to B. upon the subject, and put the letter in the post; upon the arrival of the letter at the post town near to which B. resided, A. called at the post office, and pretending to be the servant of B., asked for and obtained the letter, and burnt it: this was holden to be a stealing of the letter (*d*).

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 581.

Also every person who shall steal or unlawfully take away a post letter bag sent by a post-office packet,—or who shall steal or unlawfully take a letter out of any such bag,—or shall unlawfully open any such bag: felony, transportation for not more than fourteen years (*e*), nor less than seven, or imprisonment, with or without hard labour and solitary confinement, for not more than three years (*f*).

Stealing from a letter.] Every person who shall steal, from or out of a post letter, any chattel or money or valuable security: felony, transportation for life (*g*), or not less than seven years, or imprisonment, with or without hard labour and solitary confinement, for not more than four years (*h*).

The commitment in this and such of the following offences as are indictable, may readily be framed from the last form, *supra*.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 582.

Receiving letters so stolen, &c.] Every person who shall receive any post letter or post letter bag, or any chattel or money or valuable security, the stealing or taking or embezzling or secreting whereof shall amount to a felony under the post-office Acts, knowing the same to have been feloniously stolen, taken, embezzled, or secreted, and to have been sent or to have been intended to be sent by the post: felony, trans-

(*b*) 1 Vict. c. 36, s. 28.
(*c*) Id. ss. 41, 45.
(*d*) *R.* v. *Eliz. Jones*, 2 Car. & K. 236.
(*e*) 1 Vict. c. 36, s. 29.
(*f*) Id. ss. 41, 42.
(*g*) Id. s. 27.
(*h*) Id. ss. 41, 42.

portation for life, and he may be indicted and convicted either as an accessory after the fact or for a substantive felony, and in the latter case, whether the principal felon shall or shall not have been previously convicted, or shall or shall not be amenable to justice (*i*).

Opening or delaying letters.] Every person employed by or under the post office, who shall contrary to his duty open or procure or suffer to be opened a post letter,—or shall wilfully detain or delay, or procure or suffer to be detained or delayed, a post letter: misdemeanor, fine or imprisonment, or both: provided always, that nothing herein contained shall extend to the opening or detaining or delaying of a post letter returned for want of a true direction, or of a post letter returned by reason that the person to whom the same shall be directed is dead or cannot be found, or shall have refused the same, or shall have refused or neglected to pay the postage thereof; nor to the opening or detaining or delaying of a post letter in obedience to an express warrant in writing under the hand of one of the principal secretaries of state (*k*).

Retaining letters lost or misdelivered.] And whereas post letters are sometimes by mistake delivered to the wrong person, and post letters and post letter bags are lost in the course of conveyance or delivery thereof, and are detained by the finders in expectation of gain or reward; be it therefore enacted, that every person who shall fraudulently retain, or shall wilfully secrete or keep or detain,—or being required to deliver up by an officer of the post office, shall neglect or refuse to deliver up—a post letter, which ought to have been delivered to any other person, or a post letter bag or post letter which shall have been sent, whether the same shall have been found by the person secreting, keeping, or detaining, or neglecting or refusing to deliver up the same, or by any other person:—misdemeanor, punished by fine or imprisonment (*l*).

Stealing or detaining votes or newspapers.] Every person employed in the post office, who shall steal, or shall for any purpose embezzle, secrete, or destroy, or shall wilfully detain or delay in course of conveyance or delivery thereof by the post, any printed votes or proceedings in parliament, or any printed newspaper, or any other printed paper whatever sent by the post without covers, or in covers open at the sides: misdemeanor, fine or imprisonment, or both (*m*).

(*i*) 1 Vict. c. 36, s. 30.
(*k*) Id. s. 25.
(*l*) 1 Vict. c. 36, s. 31.
(*m*) Id. s. 32.

2. *Frauds upon the Post Office.*

Forging the hand of the receiver-general.] Every person who shall knowingly or wilfully forge or counterfeit, or cause or procure to be forged or counterfeited, the name or handwriting of the receiver-general of the general post office, or of any person employed by or under him, to any draft, instrument, or writing whatsoever, for or in order to the receiving or obtaining of any money in the hands or custody of the governor and company of the Bank of England or Ireland on account of the receiver-general of the post office,—or shall forge or alter, or shall offer, utter, dispose of, or put off, knowing the same to be forged or altered, any draft, warrant, or order of such receiver-general, or of any person employed by or under him, for money or for payment of money,—with intent to defraud any person whomsoever: felony, transportation for life (*n*), or for not less than seven years, or imprisonment, with or without hard labour and solitary confinement, for not more than four years (*o*).

3. *Principals and Accessories.*

Principals and accessories in felonies.] In every felony punishable under the post-office Acts, every principal in the second degree, and every accessory before the fact, shall be punishable in the same manner as the principal in the first degree; and every accessory after the fact (except only a receiver of any property or thing stolen, taken, embezzled, or secreted), shall, on conviction, be liable to be imprisoned for any term not exceeding two years; and every person who shall aid, abet, counsel, or procure the commission of any misdemeanor punishable under the post-office Acts, shall be liable to be indicted and punished as a principal offender (*p*).

Soliciting others to commit felonies, &c.] And every person who shall solicit or endeavour to procure any other person to commit a felony or misdemeanor punishable by the post-office Acts: misdemeanor, imprisonment for not more than two years (*q*).

(*n*) 1 Vict. c. 36, s. 33.
(*o*) Id. ss. 41, 42.
(*p*) 1 Vict. c. 36, s. 35.
(*q*) Id. s. 36.

4. *Proceedings for Offences.*

Where offences to be tried.] The offence of every offender against the post-office Acts, may be dealt with, and indicted, and tried, and punished, and laid and charged to have been committed, either in the county or place where the offence shall be committed, or in any county or place in which he shall be apprehended or be in custody; and where an offence shall be committed in or upon or in respect of a mail, or upon a person engaged in the conveyance or delivery of a post letter bag or post letter, or in respect of a post letter bag or post letter, or a chattel or money or valuable security sent by the post, such offence may be dealt with and inquired of, and tried and punished, and laid and charged to have been committed, as well in any county or place in which the offender shall be apprehended or be in custody, as also in any county or place through any part whereof the mail, or the person, or the post letter bag or the post letter, or the chattel, or the money, or the valuable security sent by the post, in respect of which the offence shall have been committed, shall have been passed in due course of conveyance or delivery by the post, in the same manner as if it had been actually committed in such county or place; and in all cases where the side or the centre or other part of a highway, or the side, the bank, the centre, or other part of a river, or canal or navigation, shall constitute the boundary of two counties, such offence may be dealt with and inquired of, and tried and punished, and laid and charged to have been committed in either of the said counties through which, or adjoining to which, or by the boundary of any part of which, the mail or person shall have passed in due course of conveyance or delivery by the post, in the same manner as if it had actually been committed in such county or place; and every accessory before or after the fact to any such offence, if the same be a felony, and every person aiding or abetting, or counselling or procuring the commission of any such offence, if the same be a misdemeanor, may be dealt with, indicted, tried, and punished as if he were a principal, and his offence laid and charged to have been committed in any county or place in which the principal offender may be tried (*r*).

In whom property to be alleged.] In every case where an offence shall be committed in respect of a post letter bag or a post letter, or a chattel, money, or valuable security, sent by

(*r*) 1 Vict. c. 36, s. 37.

the post, it shall be lawful to lay the property in the post-master-general; and it shall not be necessary in the indictment to allege or to prove upon the trial that the post letter bag or any such post letter or valuable security was of any value; and in any indictment against a person employed under the post office, it shall be lawful to state and allege that such offender was employed under the post office of the United Kingdom at the time of the committing of such offence, without stating further the nature or particulars of his employment (*s*).

POTATOES.

See "Larceny."

PRINCIPAL.

See "Accessory."

PRISON BREAKING.

Breach of prison.] If any person in lawful custody for a supposed crime, break the place where he is confined, and escape: if he were in custody for felony, he will be guilty of felony; if for a misdemeanor, he will be guilty of a misdemeanor (*a*). So, if a stranger break a prison, and thereby procure the escape of such a prisoner, he is punishable in the same manner. The offender may be tried either in the county where the offence was committed, or in that where he shall be apprehended (*b*). Convicts imprisoned in the Penitentiary at Milbank, breaking prison or escaping, are punishable with transportation for life, or not less than fifteen years, or imprisonment, with or without hard labour, for not more than three years (*c*). As to breaking out of Parkhurst Prison, see 1 & 2 Vict. c. 82, s. 12.

Commitment:—*On ——, at ——, being then lawfully imprisoned in the gaol of ——, for ——, did then and there* [*feloniously*], *unlawfully and injuriously break the said gaol, by means whereof he the said A. B. then and there did escape from the said gaol, and go at large whithersoever he would. And you the said keeper*, &c.

(*s*) 1 Vict. c. 36, s. 40.

(*a*) 1 Ed. 2, stat. 2. 2 Hawk. c. 18, s. 21.

(*b*) 4 G. 4, c. 64, s. 44.

(*c*) 1 Vict. c. 91, s. 1.

Assisting prisoners to escape.] If any person shall convey or cause to be conveyed into any prison, any mask, vizor, or other disguise, or any instrument or arms proper to facilitate the escape of prisoners, and deliver them to a prisoner or to other persons for him,—or if he aid or assist a prisoner in escaping or attempting to escape from prison:—felony, transportation for not more than fourteen years (*d*). See this statute more at large, *ante*, vol. 1, tit. "*Gaols and Houses of Correction.*"

PROVOKING TO FIGHT.

See "Challenge."

PUBLIC WORSHIP.

See "Dissenters."

QUAKER.

See "Evidence."

QUARANTINE.

The stat. 6 G. 4, c. 78, contains several regulations as to quarantine, and assigns pecuniary penalties for the breach of them. The only indictable offence created by the statute, is that of forging certificates required by orders of the privy council relating to quarantine, which offence is made felony, but without assigning any particular punishment for it. As prosecutions for these offences, however, are always instituted by the commissioners of the customs, and their solicitor, in all cases where the justices of the peace are required to act, produces to them the statute, the regulations, orders in council, and the necessary forms, it is deemed unnecessary to treat of the subject further in this place. It may be necessary to mention, however, that it has been holden that disobeying the orders of the privy council, made in pursuance of a statute relating to quarantine, is an indictable misdemeanor, and punishable with fine or imprisonment, or both (*e*).

(*d*) 2 & 3 Vict. c. 56, s. 8.

(*e*) *R.* v. *Harris*, 4 T. R. 202.

QUARTER SESSIONS.

See "Sessions of the Peace.'

QUEEN'S STORES.

Stores, how marked.] All persons other than those contracting with the commissioners of the navy, ordnance, or victualling or victualling office, for Her Majesty's use, are prohibited from marking any stores of war or naval stores whatsoever, with the marks used to or marked upon Her Majesty's warlike and naval or ordnance stores, that is to say:—any cordage of three inches and upwards, wrought with a white thread laid the contrary way—or any smaller cordage, from three inches downwards, with a twine in lieu of a white thread, laid the contrary way,—[or with one or more worsted threads, in either case (*f*)];—or on any canvas, wrought or unwrought, with a blue streak in the middle;—or any other stores, with the broad arrow, by stamp, brand or otherwise (*g*).

Having or selling such stores.] All persons in whose custody, possession or keeping such goods or stores [or timber (*h*)], marked as aforesaid [or any public stores whatsoever (*i*)], shall be found, not being employed as aforesaid,—and all persons who shall conceal such goods and stores, being indicted and convicted thereof:—shall forfeit the goods and 200*l.*, together witn costs (*k*), which penalty, however, the court may mitigate) (*l*), or he may be punished with public whipping or imprisonment and hard labour for not more than six months (*m*), or public whipping and imprisonment and hard labour for not more than three months (*n*). Second offence, transportation for fourteen years, or whipping, fine or im-

(*f*) 54 G. 3, c. 60.
(*g*) 9 & 10 W. 3, c. 41, s. 1.
(*h*) 9 G. 1, c. 8, s. 3.
(*i*) 55 G. 3, c. 127.
(*k*) 9 & 10 W. 3, c. 41, s. 2.
(*l*) 9 G. 1, c. 8, s. 4; 17 G. 2, c. 40, s. 10.
(*m*) 9 G. 1, c. 8, s. 4.
(*n*) 17 G. 2, c. 40, s. 10.

prisonment (*o*). Under this latter statute he is not punishable with hard labour (*p*).

Also any person, not being a contractor as above mentioned, who shall willingly or knowingly sell or deliver, or cause to be sold or delivered, or shall knowingly receive, or have in his custody, possession or keeping, any stores of war, or naval ordnance, or victualling stores, or any goods whatsoever marked as in stat. 9 & 10 W. 3, c. 41, is expressed, or any canvas marked either with a blue streak in the middle, or with a blue streak in a serpentine form, or any bewper, otherwise called buntin, wrought with one or more streaks of raised tape, the same being in a raw or unconverted state, or being new, or not more than one-third worn [or any public stores whatsoever (*q*)],—and any person who shall conceal any such stores or goods,—shall be deemed a receiver of stolen goods knowing them to have been stolen, and shall on conviction be transported for fourteen years (*r*),—unless he shall upon his trial produce a certificate, under the hands of three or more of the principal officers or commissioners of the navy, ordnance, or victualling, expressing the number, quantity or weight of such stores and goods, and the reason of the same coming into his possession (*s*), or the like certificate of the stores having been sold on a foreign station (*t*), or a certificate from such person as shall appear to have bought the stores from the commissioners, that such stores were stores or part of stores bought of the commissioners (*u*), or unless he account for his possession of them in some other manner (*v*).

Search for stores, and punishment of the possessors in trifling cases.] Any commissioner of the navy, ordnance or victualling, or any justice of the peace, may, upon the oath of one witness, that there is reason to suspect that such stores or goods belonging to His Majesty are concealed in any dwelling-house, outhouse or other place, or on board of any vessel, boat, &c., may grant his warrant to any peace officer to search the same in the day time; and if any stores marked as aforesaid be found, he may cause the same and the offender to be brought before him, and may convict, bind over or otherwise deal with such offender according to law;—and if any goods not so marked shall be found, which may reasonably be expected to belong to His Majesty, the person in whose possession they were found shall be required to give an account, to the satisfaction of such commissioner or justice, that the same

(*o*) 39 & 40 G. 3, c. 89, ss. 5, 7. See *ante*, vol. 2, tit. "*Marine Stores.*"

(*p*) *R.* v. *Silversides*, 11 Law J. 82, m.

(*q*) 55 G. 3, c. 127.

(*r*) 39 & 40 G. 3, c. 89, s. 1.

(*s*) Id.

(*t*) 56 G. 3, c. 80.

(*u*) 39 & 40 G. 3, c. 89, s. 25.

(*v*) *R.* v. *Banks*, 1 Esp. 144.

were not embezzled or stolen from His Majesty, or that they came into his possession honestly, without any suspicion of their having been embezzled or stolen; and on failure thereof by a reasonable time to be set by such commissioners or justices, such stores shall be forfeited, and such party shall be deemed guilty of a misdemeanor (*x*), and shall forfeit 40*s*. for the first offence, 5*l*. for the second, and 10*l*. for the third, half to the informer, and half to the treasurer of the navy or ordnance, to be levied by distress; and on a return being made by the constable that no sufficient distress can be found, the offender (who in the mean time shall be kept in custody) shall be committed to the common gaol for three calendar months, unless such penalty be sooner paid (*y*). And the same, where such stores are found in a barge or craft by persons deputed by the commissioners; and such barge or craft shall be forfeited (*z*).

And every such commissioner or justice may hear and determine in a summary way any complaint against any person (not being a contractor) for unlawfully selling or delivering or causing to be sold or delivered, or for receiving or having in his keeping, or for concealing any such stores or goods so marked as aforesaid, in cases where the value is not above 20*s*.;—and, upon information within three calendar months, shall cause him to be apprehended and brought before him, or, if he cannot be found, may summon him by leaving such summons at his last or usual place of abode; and he may also summon the witnesses on either side, and examine into the matter of fact, and on due proof, by confession or the oath of one witness, shall give judgment accordingly, and inflict a fine of 10*l*. [which however may be mitigated, but so as not to reduce it to less than a moiety, over and above costs (*a*)], half to the informer, and half to the treasurer of the navy or ordnance, (after first deducting the charges,) to be levied by distress, and the goods distrained, if not redeemed within six days, may be sold; or, in default of sufficient distress, such offender shall be committed to the common gaol for three calendar month, unless such fine shall be sooner paid;—or in lieu of such fine, the commissioner or justice may cause the offender to be imprisoned and kept to hard labour in the house of correction for three calendar months, [in which case a reward of 5*l*. shall be paid to the informer by the treasurer of the navy or ordnance (*b*)]; and the Crown's moiety of any fine, and of the produce of the sale of any barge or boat forfeited, shall be received by the commissioner or justice, and by him transmitted within thirty days to the treasurer of the

(*x*) 39 & 40 G. 3, c. 89, s. 11.
(*y*) Id. s. 16.
(*z*) Id. s. 12.
(*a*) 39 & 40 G. 3, c. 89, s. 19.
(*b*) Id. s. 26.

navy or ordnance, under a penalty of 50*l.* (*c*). This however shall prevent a party, accused of any offence as above mentioned, from being prosecuted as a receiver of stolen goods (*d*).

No such summary proceedings, however, shall be had before any justice of the peace, without the consent in writing of one of the principal officers or commissioners of the navy, ordinance, or victualling, respectively (*e*).

The conviction may be in this form, or to the like effect:—*County of* ——, *to wit*: *Be it remembered, that on the* —— *day of* ——, *in the year of our Lord* ——, *A. O. of* ——, *in the* —— *of* ——, *was convicted before me, one of the commissioners of Her Majesty's* —— [or *one of Her Majesty's justices of the peace for the* —— *of* ——, as the case may be], *for that the said A. O., on the* —— *day of* —— *now last past, at the* —— *of* ——, *in the said* —— *of* ——, *did* [here state the offence]: *contrary to the statute in such case made and provided. Given*, &c.

The statute gives an appeal against such conviction, to the next sessions, upon the party's entering into a recognizance with one surety in treble the value of the fine (*f*). The conviction however shall not be removed by *certiorari* (*g*). Persons summoned as witnesses, neglecting to appear, without reasonable excuse, shall forfeit 10*l.*, to be recovered as above (*h*).

Defacing marks.] And if any person shall wilfully and fraudulently destroy, beat out, take out, cut out, deface, obliterate or erase, wholly or in part, any of the marks mentioned in stat. 9 & 10 W. 3, c. 41, or in this Act, *ante*, p. 334, denoting such stores to be the property of His Majesty, or cause any other person to do so, for the purpose of concealing His Majesty's property therein:—felony, transportation for fourteen years (*i*), or whipping, fine or imprisonment, or all or any, as the court shall think fit,—one moiety of such fine to go to His Majesty, the other to the informer (*k*).

Burning or destroying stores.] If any person shall, either in this realm or any place thereto belonging, wilfully and maliciously set on fire, burn or otherwise destroy, or cause or aid therein, any of His Majesty's military, naval, or victualling stores or other ammunition of war, or any place where any such stores or ammunition shall be placed or kept:—felony, death; and persons who commit the offence out of

(*c*) 39 & 40 G. 3, c. 89, s. 18.
(*d*) Id. s. 24.
(*e*) Id. s. 20.
(*f*) Id.
(*g*) 39 & 40 G. 3, c. 89, 22.
(*h*) Id. s. 23.
(*i*) Id. s. 4.
(*k*) Id. s. 7.

the realm, may be tried either where the offence shall be committed or in any county within the realm (*h*).

Stealing or embezzling stores.] Persons convicted of stealing or embezzling any of His Majesty's sails, cordage, or any other of His Majesty's naval stores, to the value of twenty shillings: felony (*i*), transportation for life, or not less than seven years, or imprisonment, with or without hard labour, for not more than seven years (*k*). As to embezzlements by officers in the public service of Her Majesty, see stat. 2 W. 4, c. 4, s. 1, *ante*, p. 111.

RAPE.

Rape.] Rape is the having carnal knowledge of a woman, violently and against her will. It is a felony, and punishable with transportation for life (*a*). The offence is deemed complete, upon proof of penetration only, without proof of emission (*b*), and even although emission be negatived by the evidence (*c*); and the penetration may be sufficient to constitute the offence, although the hymen be not ruptured (*d*). Where a man, by fraud, went to bed to a married woman, and she, believing him to be her husband, allowed him to have connexion with her: this was holden not to be rape (*e*): but although the man, in such a case, cannot be indicted for a rape, he may be indicted and punished for the assault (*f*). But where a man gave a woman liquor, which had the effect of rendering her insensible, and he then took advantage of her situation, and had connexion with her during her insensibility: the judges held this to be a rape, although the jury found that the prisoner had given her the liquor for the purpose of exciting her, and not for the purpose of rendering her insensible and then having connexion with her (*g*). It may be necessary to mention that a boy under fourteen years of age

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(*h*) 12 G. 3, c. 24.
(*i*) 22 C. 2, c. 5.
(*k*) 4 G. 4, c. 54.
(*a*) 4 & 5 Vict. c. 56, s. 3.
(*b*) Id. s. 18; see *ante*, p. 69; and see *R.* v. *Cozins*, 6 Car. & P. 351. *R.* v. *Jennings*, 4 Id. 249. *R.* v. *Cox*, 5 Id. 297. *R.* v. *M'Rue*, 8 Id. 641.
(*c*) *R.* v. *Cox*, 5 Car. & P. 297. *R.* v. *Allen*, 9 Id. 31.
(*d*) *R.* v. *Hughes*, 9 Car. & P. 752.
(*e*) *R.* v. *Jackson*, R. & Ry. 487. *R.* v. *Clarke*, 24 Law J. 25, m.
(*f*) *R.* v. *Saunders*, 8 Car. & P. 265. *R.* v. *M'Williams*, Id. 286; and see *R.* v. *Stanton*, 1 Car. & K. 415.
(*g*) *R.* v. *Camplin*, 1 Car. & K. 746.

cannot be guilty of the offence of rape, or of an assault with intent to commit it (*h*); but he may be convicted as for an assault (*i*). As to an assault with intent to commit a rape, see *ante*, p. 36.

Commitment:—*On ——, at ——, did violently assault one C. D., and her the said C. D. then and there violently and against her will feloniously did ravish and carnally know: against the form of the statute in such case made and provided. And you the said keeper*, &c.

Any person present aiding and abetting is equally guilty (*k*), even although he be under fourteen years of age (*l*).

See the form of an indictment for rape, and the evidence necessary to support it, *Arch. New Cr. Law*, 304; and the like of an indictment for an attempt to commit it, *Id.* 285.

Procuring the defilement of girls.] "If any person shall, by false pretences, false representations or other fraudulent means, procure any woman, or any child under the age of twenty-one years, to have illicit carnal connexion with any man:" misdemeanor, imprisonment and hard labour for not more than two years (*m*). Costs of prosecution, &c., allowed as in felony (*n*).

Commitment:—*On ——, at ——, by falsely pretending and representing that ——, did procure the said C. D. to have illicit, carnal connexion with a certain man named ——, the said C. D. at the time of such procurement being a girl under the age of twenty-one years, to wit, of the age of ——: against the form of the statute in such case made and provided. And you the said keeper, &c.*

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 303.

As to the offences of having carnal connexion with a girl under ten years of age, or between ten and twelve, see *ante*, pp. 69, 70.

(*h*) *R.* v. *Philips*, 8 Car. & P. 736.

(*i*) *R.* v. *Brimilow*, 9 Car. & P. 366.

(*k*) *R.* v. *Crisham*, Car. & M. 187.

(*l*) *R.* v. *Groombridge*, 7 Car. & P. 582.

(*m*) 12 & 13 Vict. c. 76, s. 1.

(*n*) Id. ss. 2, 3.

RECEIVING STOLEN GOODS.

Where the principal is guilty of a felony.] "If any person shall receive any chattel, money, valuable security, or other property whatsoever, the stealing or taking whereof shall amount to a felony, either at common law or by virtue of this Act, such person knowing the same to have been feloniously stolen or taken:" felony, transportation for fourteen years or not less than seven, or imprisonment with or without hard labour, for not more than three years, and, if a male, to be once, twice, or thrice publicly or privately whipped, (if the court shall think fit,) in addition to such imprisonment (*a*).

The receipt is proved by the party's having the goods in his possession (*b*), but under such circumstances as do not raise a presumption that he himself stole them (*c*). The guilty knowledge is usually proved by showing that he bought the goods very much under the market price, or that he concealed them, or from his acts or conversation before or at the time of his receiving them, or from any other circumstances from which it may fairly be inferred that at the time he received them he knew they had been stolen or not honestly come by. And the receiving of them, for the purpose of concealment or the like, is as much an offence within the statute, as if the offender had purchased them for the purpose of making a profit of them (*d*). But if a wife receive goods from her husband which she knows he has stolen, she cannot be indicted as a receiver (*e*). Where goods were found by the owner in the possession of a person who had stolen them, and he gave him in custody to a policeman, who took possession of the goods at the same time; in order to detect a receiver to whom the prisoner had sold other goods which he had stolen, the policeman gave the goods to the thief, and the owner directed him to go and sell them to the receiver, and he accordingly went to A. B. and sold them: it was holden that A. B. could not be indicted as a receiver of these goods, for they were last in the possession of the owner himself, and the thief was his agent for the sale of them (*f*).

(*a*) 7 & 8 G. 4, c. 29, s. 54.
(*b*) *R.* v. *Hill*, 2 Car. & K. 978; 18 Law J. 199, m.
(*c*) *R.* v. *Dursley et al.*, 6 Car. & P. 399. *R.* v. *Butteris*, Id. 147; and see *R.* v. *Wade et al.*, 1 Car. & K. 739.
(*d*) *R.* v. *Richardson*, 6 Car. & P. 335. *R.* v. *Davis*, Id. 177.
(*e*) *R.* v. *Brooks*, 22 Law J. 121, m.
(*f*) *R.* v. *Rogers and Dolan*, 1 We. Rep. 177.

Commitment:—*On* ——, *at* ——, *twenty yards of calico, of the value of* ——, *of the goods and chattels of one C. D., then lately before feloniously stolen, taken and carried away by* [*some evil disposed person unknown*, or *by E. F.*] *of the said* [*evil disposed person*, or *E. F.*] *feloniously did receive, he the said A. B. then and there well knowing the said goods and chattels to have been feloniously stolen, taken and carried away: against the form of the statute in such case made and provided. And you the said keeper*, &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 473, 477.

Where the principal is guilty of a misdemeanor.] "And if any person shall receive any chattel, money, valuable security, or other property whatsoever, the stealing, taking, obtaining or converting whereof is made an indictable misdemeanor by this Act, such person knowing the same to have been unlawfully stolen, taken, obtained or converted:"—misdemeanor, transportation for seven years or imprisonment, with or without hard labour, for not more than two years, and, if a male, to be once, twice, or thrice publicly or privately whipped, (if the court shall think fit,) in addition to such imprisonment (*g*). This has reference to goods, &c., obtained by false pretences (*h*), and to goods, &c., converted by agents to their own use, as mentioned, *ante*, p. 16.

Commitment:—*On* ——, *at* ——, *two silver watches, of the value of* ——, *of the goods and chattels of one C. D., then lately before unlawfully obtained from the said C. D. by one E. F. by false pretences, with intent to cheat and defraud him of the same, of the said E. F. unlawfully did receive, he the said A. B. then and there well knowing the said goods and chattels to have been unlawfully obtained by false pretences: against the form of the statute in such case made and provided. And you the said keeper*, &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 481.

RECORDS, STEALING OR OBLITERATING.

See "Larceny."

(*g*) 7 & 8 G. 4, c. 29, s. 55. (*h*) See *ante*, p. 152.

REGISTERS OF BAPTISM, &c.

Persons giving false particulars of birth, death, or marriage.] Upon every marriage, the clergyman officiating, or the registering officer of the Quakers, or the secretary of a synagogue, may ask the parties married the particulars required to be registered (*a*). And "every person who shall wilfully make or cause to be made, for the purpose of being inserted in any register of birth, death or marriage, any false statement touching any of the particulars herein required to be known and registered, shall be subject to the same pains and penalties as if he were guilty of perjury" (*b*).

As to making false entries in such registers, see tit. "*Forgery,*" *ante*, p. 177.

REGRATING.

See "Forestalling."

RENT.

See "Rescue of Distress."

RESCUE.

What, and its punishment, 342. | *Rescue of a murderer,* 343.

What, and its punishment.] Rescue is the setting a prisoner at liberty, by force, who is in legal custody, against the will of the officer or other person in whose custody he is.

If the prisoner were convicted at the time of the rescue, then, if the prisoner were convicted of treason, the rescuer is punishable as a traitor ; if of felony, the rescuer is also guilty of felony, and is punishable with transportation for seven years, or imprisonment, with or without hard labour, for not more than three years, or less than one (*c*) ; if of misdemeanor, the rescuer is guilty of a misdemeanor, and punishable accordingly.

(*a*) 6 & 7 W. 4, c. 86, s. 40.

(*b*) Id. s. 41. See *R.* v. *Brown*, 17 Law J. 145, m.

(*c*) 1 & 2 G. 4, c. 88, s. 1.

So, if the prisoner were not convicted at the time, but were convicted afterwards and before the trial of the rescuer, the rescuer is punishable in the manner above mentioned (*d*); but if the prisoner be acquitted, the rescuer may be indicted as for a misdemeanor, and punished accordingly (*e*). If on the other hand, the rescuer be tried before the person whom he has rescued, he can be indicted only as for a misdemeanor and punished accordingly (*f*); except in the case of treason, in which case the rescuer is always punishable as a traitor (*g*).

Commitment:—*On* ——, *at* ——, *whilst one C. D. was in the lawful custody of one E. F. a* [*constable, under and by virtue of a warrant of* ——, *for* ——, or *gaoler, under and by virtue of a conviction of the said C. D. for felony,*] *unlawfully, forcibly* [*and feloniously*] *did rescue the said C. D. out of the custody of the said E. F., and him the said C. D. did put at large to go whithersoever he would. And you the said keeper*, &c.

Rescue of a murderer.] If any person shall by force set at liberty or rescue, or attempt to set at liberty or rescue, any person out of prison, who shall be committed for or found guilty of murder,—or rescue or attempt to rescue any person convicted of murder, going to execution or during execution:—felony (*h*), transportation for life or not less than fifteen years, or imprisonment with or without hard labour for not more than three years, a portion of which may be in solitary confinement, not exceeding a month at a time, or three months in any one year (*i*).

As to the rescuers of convicts ordered for transportation, see *post*, tit. "*Transportation.*"

And as to the rescue of a prisoner from Parkhurst prison, see 1 & 2 Vict. c. 82, s. 13, and *ante*, vol. 1, p. 517.

RESCUE OF A DISTRESS.

The offence of pound breach, for the purpose of rescuing cattle distrained damage feasant, has been considered, *ante*, vol. 2, p. 1020, to which the reader is referred. Also, the offence of rescuing cattle seized or impounded, which have been found straying on the highways, has been fully noticed, *ante*, vol. 1, tit. "*Highway.*" As to goods or cattle distrained for rent, if they have been impounded, either in or off the demised premises,

(*d*) 2 Hawk. c. 21, s. 7.
(*e*) 1 Hale, 598, 599.
(*f*) 2 Hawk. c. 21, s. 7.
(*g*) 1 Russ. 384.
(*h*) 25 G. 2, c. 37, s. 9.
(*i*) 1 Vict. c. 91, ss. 1, 2.

breaking the pound in order to rescue them is a misdemeanor at common law, and punishable as such (*a*). As to a rescue of them on the way to the pound, it is the subject merely of a civil action, and not of an indictment (*b*).

Commitment:—*On* ——, *at* ——, *unlawfully and forcibly did break a certain* —— *there, in which a certain horse was then impounded as a distress for rent, with intent then and there to rescue the said distress, and did then and there unlawfully and forcibly rescue the said horse from and out of the said* ——. *And you the said keeper*, &c.

RESTITUTION OF STOLEN GOODS.

If any person, guilty of felony or misdemeanor, in stealing, obtaining or converting,* or in knowingly receiving, any chattel, money, valuable security, or other property whatsoever, shall be indicted for any such offence by or on the behalf of the owner of the property or his executor or administrator, and convicted thereof:—in such case the property shall be restored to the owner or his representative; and the court before whom any such person shall be so convicted, shall have power to award from time to time writs of restitution for the said property, or to order the restitution thereof in a summary way:—provided that if it shall appear, before any award or order made, that any valuable security shall have been *bonâ fide* paid or discharged by some person or body corporate liable to the payment thereof; or being a negotiable instrument shall have been *bonâ fide* taken or received by transfer or delivery by some person or body corporate for a just and valuable consideration, without notice of its being stolen, taken, obtained or converted as aforesaid, in such case the court shall not award or order the restitution of such security (*c*). A Bank of England note, which had been paid and cancelled, was holden to be within this latter proviso (*d*).

RETURNING FROM TRANSPORTATION.

See "Transportation."

(*a*) 1 Russ. 363.

(*b*) *R.* v. *Bradshaw*, 7 Car. & P. 233.

(*c*) 7 & 8 G. 4, c. 29, s. 57.

(*d*) *R.* v. *Stanton*, 7 Car. & P. 431.

* This has reference to all cases of larceny, (see *ante*, p. 220,) obtaining money under false pretences, (*ante*, p. 152,) and the offence of agents, &c., converting to their own use property entrusted to them by their principals, as mentioned, *ante*, p. 16.

REVENUE OFFICERS.

See " Assault," " Smuggling."

RIOT.

1. *What, and how punishable.*

What.] A riot is a tumultuous disturbance of the peace, by three or more persons assembling together of their own authority, with an intent mutually to assist one another, against any one who shall oppose them, in the execution of some enterprise of a private nature, and afterwards actually executing the same in a violent and turbulent manner, to the terror of the public, whether the act intended were of itself lawful or unlawful (*a*). The intent may be inferred from the acts or general expressions of the rioters; and their actually executing a particular enterprise, is abundant proof of their previous intention to execute it. So their intention mutually to assist each other, may be inferred either from their afterwards actually assisting each other, or from their exclamations or actions, &c. whilst so assembled (*b*). And the injury or grievance complained of, and intended to be revenged or remedied by such an assembly, must relate to some private matter or quarrel only, such as is the inclosing of lands in which the inhabitants of a particular town have a right of common, or gaining the possession of lands, the title to which is in dispute, or the like; for wherever the intention of such an assembly is to redress public grievances, as to pull down all inclosures generally, to reform religion, to remove evil councillors from the Queen, &c., if they attempt to execute such their intentions with force, this would be a levying of war against the Queen, and high treason (*c*). Also, as to the act intended to be done, it is immaterial whether it be lawful or unlawful: as for instance, it is lawful to abate a nuisance, if done peaceably; but if three or more join in doing it in a violent and

(*a*) 1 Hawk. c. 65, s. 1.
(*b*) See *R.* v. *Hunt*, 3 B. & Ald. 566.
(*c*) 1 Hawk. c. 65, s. 6.

tumultuous manner, it is a riot; for the law will not suffer persons to seek redress of their private grievances, by such dangerous disturbances of the public peace (*d*).

It seems agreed, that if a number of persons, having met together at a fair or market, or any other lawful or innocent occasion, happen on a sudden quarrel to fall out, they are not guilty of a riot, but of a sudden affray only, of which none are guilty but those who actually engage in it; because the design of their meeting was innocent and lawful, and the subsequent breach of the peace happened unexpectedly, without any previous intention concerning it (*e*). Yet it is said, that if persons innocently assembled together, do afterwards, upon a dispute happening to arise among them, form themselves into parties, with promises of mutual assistance, and then make an affray, they are guilty of a riot; because, upon their confederating together with an intention to break the peace, they may as properly be said to be assembled together for that purpose from the time of such confederacy, as if their first coming together had been on such a design (*f*). However it seems clear, that if, in an assembly of persons met together on any lawful occasion, a sudden proposal should be started of going together in a body to pull down a house or inclosure, or to do any other act of violence, to the disturbance of the public peace, and such motion be agreed to, and executed accordingly, the persons concerned cannot but be rioters, because their associating themselves together for such a new purpose, is no way extenuated by their having met at first upon another (*g*).

And to constitute a riot, the purpose intended must be actually executed: if not executed, the assembly would not amount in law to a riot, but to an unlawful assembly or rout only;—an unlawful assembly, where the enterprise is merely contemplated, but nothing further done for the purpose of carrying it into execution;—a rout, where the enterprise is not only contemplated, but the parties take some steps towards carrying it into execution (*h*); it is a riot, only where what was contemplated is actually carried into execution. And the execution of such enterprise must be attended with such circumstances either of actual force or violence, or at least of an apparent tendency thereto, as are actually calculated to strike terror into the people: as the show of armour, threatening speeches, or turbulent gestures; for every such offence must be laid to be done *in terrorem populi* (*i*). And it seems that wherever three persons or more use force and

(*d*) 1 Hawk. c. 65, s. 7.
(*e*) Id. s. 3.
(*f*) Id.
(*g*) Id.
(*h*) 1 Hawk. c. 65, ss. 8, 9.
(*i*) Id. s. 5, and see s. 4. See also *R.* v. *Hughes*, 4 Car. & P. 373. *R.* v. *Cox et al.*, Id. 538.

violence in the execution of any design whatever, wherein the law does not allow the use of such force, all who are concerned therein are rioters (*k*). On the other hand, three or more persons may assemble, for the purpose of executing a wrongful act, and actually execute it, without being rioters, if they do it without threats or other circumstances of terror (*l*).

How punishable.] The punishment for riot is, fine or imprisonment, or both.

Commitment:—*On* ——, *at* ——, *together with divers other persons to the number of ten and more, unlawfully, riotously and routously did assemble and gather together, to disturb the public peace, and did then and there unlawfully, riotously and routously make a great noise, riot and disturbance, to the great terror of Her Majesty's subjects then and there being and residing, passing and repassing* [*and did then and there unlawfully, riotously and routously assault one E. F., and him the said E. F. did then and there beat, wound and ill treat*]. *And you the said keeper*, &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 588.

2. *How, and by whom suppressed.*

By private persons.] A private person may lawfully endeavour to prevent those whom he sees engaged in a riot or rout, from executing their purpose, and he may stop those whom he shall see coming to join them (*m*). And for this purpose he may lawfully arm himself, and may make use of his arms, in suppressing the riot, if it become necessary, but it is not prudent or advisable for private persons thus to use arms, of their own authority, in ordinary cases, as, under pretence of keeping the peace, they may be guilty of enormous breaches of it; it is only in case of riots that savour of rebellion, that such violent methods seem proper (*n*).

And what may be thus done by a private person, may also be done by the military, even although they be not at the time acting under the orders of a justice of the peace. But they must be cautious not to use their arms in such a case, where

(*k*) 1 Hawk. c. 65, s. 2.
(*l*) Id. s. 5.
(*m*) 1 Hawk. c. 65, s. 11.
(*n*) Id.

there is no actual necessity, except indeed in their own defence in case they should be attacked.

By constables, &c.] Constables and other peace officers also, not only may do, but they are bound by the duty of their office to do, all that in them lies towards the suppressing of a riot, and they may command all other persons to assist them in doing so (*o*).

By justices of the peace.] By stat. 34 Ed. 3, c. 1, justices of the peace shall have power to restrain rioters, and to pursue, arrest, take and chastise them, according to their trespass and offence, and to cause them to be imprisoned and duly punished according to the law and custom of the realm. If any justice of peace, therefore, find persons riotously assembled, he may not only arrest the offenders himself, and bind them to their good behaviour, or imprison them until they find bail, but he may also authorize others to arrest them by a bare parol command, without warrant; and the persons so commanded may pursue and arrest the offenders, as well in his absence as in his presence (*p*). If justices fail in their duty in this respect, it is a high misdemeanor, punishable upon indictment or information with fine or imprisonment, or both (*q*).

Also, by stat. 13 H. 4, c. 7, if any riot, assembly or rout of people against the law, be made in the realm, [whether in the presence of justices of the peace, or in their absence (*r*)], the justices of the peace, three or two of them at the least, and the sheriff or under-sheriff of the county where such riot, &c., shall be made, shall come with the power of the county, if need be, to arrest them, and shall arrest them; and the same justices and sheriff or under-sheriff shall have power to record what they shall find so done in their presence against the law, and by that record such trespassers and offenders shall be convicted in the manner and form contained in the statute of "Forcible Entries." See as to the proceedings of justices upon view, in the case of a forcible entry, *ante*, vol. 1, p. 416.

As to the power of the county, or *posse comitatus*, above mentioned, it is enacted by stat. 2 H. 5, c. 8, s. 2, that the king's liege people, (not being clergymen, women, persons decrepit, or infants under the age of fifteen,) being sufficient to travel, shall be assistants to such justices, upon reasonable warning, to ride with them in aid to resist such riots, routs and assemblies, on pain of imprisonment, and to make fine and ransom to the king. And it has been holden, that those

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(*o*) 1 Hawk. c. 65, s. 11.
(*p*) Id. s. 16.
(*q*) See *R.* v. *Pinney*, 3 B. & Ad. 947.
(*r*) 1 Hawk. c. 65, s. 22.

who attend the justices, in order to suppress a riot, may take with them such weapons as shall be necessary to enable them effectually to do it, and that they may justify beating, wounding and even killing such rioters as shall resist, or refuse to surrender themselves (*s*).

3. *The Riot Act.*

The proclamation, and how made.] Every justice of the peace, sheriff of a county or his under-sheriff, and the mayor, bailiff and other head officer of any city or town corporate, within the limits of their respective jurisdictions, on notice or knowledge that persons, to the number of twelve or more, are unlawfully, riotously and tumultuously assembled together, to the disturbance of the public peace, shall resort to the place where such unlawful, riotous and tumultuous assembly shall be, and there make or cause to be made proclamation, in the order and form following, that is to say: the justice or other person so authorized as aforesaid, shall go among the rioters, or as near to them as he can go with safety, and with a loud voice command or cause to be commanded silence to be while the proclamation is making; and after that, he shall openly and with loud voice make or cause to be made proclamation, in these words or like in effect (*t*):—

Our sovereign lady the Queen chargeth and commandeth all persons, being assembled, immediately to disperse themselves and peaceably to depart to their habitations or to their lawful business, upon the pains contained in the Act made in the first year of King George the First, for preventing tumults and riotous assemblies. God save the Queen.

Where these words "God save the Queen" were omitted, the proclamation was holden to be bad (*u*).

Opposing the making of proclamation.] And if any person do or shall, with force and arms, "wilfully and knowingly oppose, obstruct, or in any manner wilfully and knowingly let, hinder or hurt any person or persons that shall begin to proclaim or go to proclaim, according to the proclamation hereby directed to be made, whereby such proclamation shall not be

(*s*) 1 Hawk. c. 65, s. 21.
(*t*) 1 G. 1, st. 2, c. 5, s. 2.
(*u*) *R.* v. *Child et al.*, 4 Car. & P. 442.

made, that then every such opposing, obstructing, letting, hindering, or hurting such persons so beginning or going to make such proclamation as aforesaid, shall be adjudged felony" (*a*), and punished with transportation for life or not less than fifteen years, or imprisonment with or without hard labour for not more than three years, and a part thereof (not exceeding a month at a time, or three months in a year) may be in solitary confinement (*b*).

Commitment:—*On* ——, *at* ——, *with force and arms, feloniously did wilfully and knowingly oppose, obstruct and hinder J. P. Esquire, one of Her Majesty's justices of the peace for the county aforesaid, who was then and there beginning* [or *going*] *to make proclamation to a certain unlawful, riotous and tumultuous assembly there to disperse themselves, according to the statute for preventing tumults and riotous assemblies, whereby such proclamation was not then made: against the form of the statute in such case made and provided. And you the said keeper*, &c.

Rioters remaining after proclamation.] And "if any persons to the number of twelve or more,—being unlawfully, riotously and tumultuously assembled together, to the disturbance of the public peace,—and being required or commanded by any one or more justice or justices of the peace, or by the sheriff of the county or his under-sheriff, or by the mayor, bailiff or bailiffs or other head officer or justice of the peace of any city or town corporate where such assembly shall be, by proclamation to be made in the king's name in the form herein directed, to disperse themselves, and peaceably to depart to their habitations or to their lawful business,—shall, to the number of twelve or more (notwithstanding such proclamation made), unlawfully, riotously and tumultuously remain and continue together by the space of one hour after such command or request made by proclamation:—then such continuing together to the number of twelve or more shall be adjudged felony" (*c*), and punished with transportation for life or not less than fifteen years, or imprisonment with or without hard labour for not more than three years, and a part thereof (not exceeding a month at a time, or three months in a year) may be in solitary confinement (*d*).

So, "persons unlawfully, riotously and tumultuously assembled, to the number of twelve or more, to whom proclamation should or ought to have been made if the same had not been hindered as aforesaid, shall likewise, in case they or any of them to the number of twelve or more shall continue

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(*a*) 1 G. 1, st. 2, c. 5, s. 5.
(*b*) 1 Vict. c. 91, ss. 1, 2.
(*c*) 1 G. 1, st. 2, c. 5, s. 1.
(*d*) 1 Vict. c. 91, ss. 1, 2.

together, and not disperse themselves within one hour after such let or hindrance so made, having knowledge of such let or hindrance so made," be guilty of felony (*e*), and be punishable as above mentioned (*f*).

Commitment:—*On* ——, *at* ——, *being then and there, together with divers other evil disposed persons to the number of twelve and more, unlawfully, riotously and tumultuously assembled together to the disturbance of the public peace, and being then and there required and commanded by J. P., Esquire, one of Her Majesty's justices of the peace for the county aforesaid, by proclamation in the Queen's name then by him made, to disperse themselves and peaceably to depart to their habitations or to their lawful business, feloniously did then and there, to the number of twelve and more, (notwithstanding such proclamation made as aforesaid,) riotously and tumultuously remain and continue together by the space of one hour, after such request and command made by proclamation as aforesaid: against the form of the statutes in such case made and provided. And you the said keeper*, &c.

Apprehension of the rioters.] And "if such persons, so unlawfully, riotously and tumultuously assembled, or twelve or more of them, after proclamation made in manner aforesaid, shall continue together, and not disperse themselves within one hour, then it shall and may be lawful to and for every justice of the peace, sheriff or under-sheriff of the county where such assembly shall be,—and also to and for every high and petty constable and other peace officer within such county,—and also to and for every mayor, justice of the peace, sheriff, bailiff and other head officer, high or petty constable and other peace officer of any city or town corporate, where such assembly shall be,—and to and for such other person and persons as shall be commanded to be assisting unto any such justice of the peace, sheriff or under-sheriff, mayor, bailiff or other head officer aforesaid, (who are hereby authorized and empowered to command all his Majesty's subjects of age and ability, to be assisting to them therein,) to seize and apprehend, and they are hereby required to seize and apprehend such persons so unlawfully, riotously and tumultuously continuing together after proclamation made as aforesaid, and forthwith to carry the persons so apprehended before one or more of his Majesty's justices of the peace of the county or place where such person shall be so apprehended, in order to their being proceeded against for such their offences according to law,"—and if the persons so unlawfully, riotously and tumultuously assembled, or any of them, shall happen to be killed, maimed or hurt, in

(*e*) 1 G. 1, st. 2, c. 5, s. 5. (*f*) 1 Vict. c. 91, ss. 1, 2.

the dispersing, seizing or apprehending, or endeavouring to disperse, seize or apprehend them, by reason of their resisting the persons so dispersing, seizing or apprehending, or endeavouring to disperse, seize or apprehend them: then every such justice of the peace, sheriff, under-sheriff, mayor, bailiff, head officer, high or petty constable or other peace officer, and all and singular persons being aiding or assisting to them, or any of them, shall be free, discharged and indemnified, as well against the king's majesty, his heirs and successors, as against all and every other person and persons, of, for or concerning the killing, maiming or hurting of any such person or persons so unlawfully, riotously and tumultuously assembled, that shall happen to be so killed, maimed or hurt as aforesaid (*g*).

For offences against this Act, the prosecution must be commenced within twelve months (*h*).

RIOTOUSLY DEMOLISHING A HOUSE, &c.

See "Malicious Injuries."

RIVERS AND HARBOURS.

See "Larceny," Malicious Injuries," "Ships."

ROBBERY, AND ASSAULT WITH INTENT TO ROB.

See "Larceny."

ROOTS.

See "Larceny," "Malicious Injuries."

SACRILEGE.

See "Burglary and House-breaking."

(*g*) 1 G. 1, st. 2, c. 5, s. 3. (*h*) Id. s. 8.

SEA BANK.

See "Malicious Injuries."

SEAMEN.

Forcing seamen on shore, or leaving them abroad.] If the master or mate, or other officer of any ship belonging to any of Her Majesty's subjects, shall force on shore and leave behind, or shall otherwise wilfully and wrongfully leave behind on shore or at sea, in or out of Her Majesty's dominions, any person belonging to his ship or crew, before the completion of the voyage or voyages for which such person shall be engaged, or the return of such ship to the United Kingdom:—misdemeanor, fine or imprisonment, or both; and the offender may be prosecuted wherever he or the seamen may happen to be, and the court may (if necessary) issue a commission for the examination of witnesses (*i*).

As to personating seamen, see *ante*, tit. "*Personating.*"

SEDITION.

What, and how punished.] Sedition is either by writing, or by words spoken. Seditious libels have already been considered, *ante*, p. 264. Seditious words, of the same nature as the libels there mentioned, are also punishable in the same manner, with fine or imprisonment, or both.

In the commitment, it may be advisable not only to state the sedition generally, but to set out some of the strongest expressions. It may be thus:—*On ——, at ——, wickedly, maliciously and seditiously did, in the presence and hearing of divers persons, utter and publish certain false, wicked, malicious, scandalous and seditious words and expressions of and concerning our sovereign lady Queen Victoria and her government; and then and there, in the presence and hearing of the said several persons, falsely, wickedly, and seditiously did say that ——. And you the said keeper*, &c.

(*i*) 7 & 8 Vict c. 112, s. 47. See stat. 9 G. 4, c. 31, s. 30; and see *R.* v. *Dunnett*, 1 Car. & K. 425.

SEDITIOUS MEETINGS.

1. *Seditious Meetings.*

The people of this country have an undoubted right to meet, for the purpose of considering or stating what are, or even what they deem to be, their grievances; but they must do so peaceably and quietly, and in a manner not calculated to excite alarm or terror in others of Her Majesty's subjects. But if they come armed, or the meeting be otherwise attended with circumstances calculated to excite terror, or to produce danger to the tranquillity and peace of the neighbourhood, it is an unlawful assembly (*a*); and if they attempt to excite hatred or contempt of the Queen or her government, or resistance to the laws, it is a seditious assembly. In either case, not only the persons who take an active part in the meeting, but those who by their presence wilfully continue it, are guilty of a misdemeanor, and punishable with fine or imprisonment, or both. As to what is sedition, *see ante*, pp. 264, 265.

2. *Unlawful Combinations and Confederacies.*

What.] Every society, the members whereof shall, according to the rules thereof, or to any provision or agreement for that purpose, be required or admitted to take any oath or engagement which shall be an unlawful oath or engagement within the intent and meaning of stat. 37 G. 3, c. 123, [or stat. 52 G. 3, c. 104 (*b*), 57 G. 3, c. 19, s. 25,] or to take any oath not required or authorized by law;—and every society the members whereof, or any of them, shall take or in any manner bind themselves by any such oath or engagement, on becoming or in consequence of being members of such society;—and every society, the members whereof shall take, subscribe, or assent to any test or declaration not required by

(*a*) *R.* v. *Neal et al.*, 9 Car. & P. 431. *R.* v. *Vincent et al.*, Id. 91.

(*b*) *Ante*, p. 309.

law, or not authorized in manner hereinafter mentioned [in whatever manner or form such taking or assenting shall be performed, whether by words, signs or otherwise (*c*),]—and every society of which the names of the members, or of any of them, shall be kept secret from the society at large, or which shall have any committee or select body so chosen or appointed that the members constituting the same shall not be known by the society at large to members of such committee or select body, or which shall have any president, treasurer, secretary, delegate, or other officer so chosen or appointed, that the election or appointment of such persons to such offices shall not be known to the society at large, or of which the names of all the members, and of all committees or select bodies of members, and of all presidents, treasurers, secretaries, delegates and other officers, shall not be entered in a book or books to be kept for that purpose, and to be open to the inspection of all the members of such society;—and every society which shall be composed of different divisions or branches, or of different parts, acting in any manner separately or distinct from each other, or of which any part shall have any separate or distinct president, secretary, treasurer, delegate or other officer, elected or appointed by or for such part, or to act as an officer for such part;—shall be deemed and taken to be unlawful combinations and confederacies;—and every person who shall become a member of any such society,—and every person who shall directly or indirectly maintain a correspondence or intercourse with any such society, or with any division, branch, committee, or other select body, president, treasurer, secretary, delegate, or other officer, or member thereof as such,—or who shall, by contribution of money or otherwise, aid, abet, or support such society, or any members or officers thereof as such,—shall be deemed guilty of an unlawful combination and confederacy (*d*).

What not.] But nothing herein contained shall extend to any declaration to be taken, subscribed or assented to by the members of any society, in case the form of such declaration shall have been first approved and subscribed by two or more of his Majesty's justices of the peace, for the county, riding, division, or place where such society shall ordinarily assemble, and shall have been registered with the clerk of the peace, or his deputy for such county, riding, division, or place; but such approbation of the justices as aforesaid shall remain valid and effectual no longer than until the next general sessions for such county, stewartry, riding, division, or place, unless the same shall, on application made by the parties concerned,

(*c*) 57 G. 3, c. 19, s. 25. (*d*) 39 G. 3, c. 79, s. 2.

be confirmed by the major part of the justices present at such general sessions (*d*).

Also nothing in this Act shall extend to the meetings of any lodge of freemasons, which shall, before the passing of this Act, have been usually holden under that denomination and in conformity to the rules prevailing among the said societies of freemasons (*e*); to be certified on oath by two of its members, and the certificate deposited with the clerk of the peace as herein directed (*f*).

If in alehouse, licence forfeited.] And any two or more justices of the peace may, upon evidence on oath that any meeting of any society hereby declared to be an unlawful combination and confederacy, or any meeting for any seditious purpose, hath been held at any house, room or place licensed for the sale of ale, beer, wine, or spirituous liquors, adjudge and declare the licence to such person to be forfeited (*g*).

Prosecution.] Every person guilty of any such unlawful combination and confederacy, shall be proceeded against for such offence in a summary way, either before one justice of the peace, for the county, riding, division, city, town, or place where such person shall happen to be, or by indictment to be preferred in the county, &c. in England, wherein such offence shall be committed; and being convicted by such justice as aforesaid, he shall be committed to the common gaol or house of correction for such county, &c., for three calendar months, or shall be by such justice adjudged to forfeit and pay the sum of twenty pounds, as to such justice or justices shall seem meet; and in case such sum of money shall not be forthwith paid into the hands of such justice, he shall by warrant under his hand and seal, cause the same to be levied by distress and sale of the offender's goods and chattels, together with all costs and charges attending such distress and sale, and for want of sufficient distress shall commit such offender to the common gaol or house of correction of such county, &c., as aforesaid, for any time not exceeding three calendar months; and every person convicted of any such offence, upon indictment by due course of law, may be transported for seven years, or imprisoned for not more than two years (*h*).

The following is the form of conviction :—*Berkshire, to wit: —Be it remembered, that on this —— day of ——, in the —— year of the reign of ——, A. B. of —— is duly con-*

(*d*) 39 G. 3, c. 79, s. 3.
(*e*) Id. s. 5.
(*f*) Id. s. 6.
(*g*) 39 G. 3, c. 79, s. 14.
(*h*) Id. s. 8.

victed before me [or *us*], —— *of Her Majesty's justices of the peace for* ——, *in pursuance of an Act of the thirty-ninth year of the reign of King George the Third* [set forth the title of the Act], *for that the said A. B. after the passing of the said Act, to wit, on the* —— *day of* ——, *at* ——, *did, contrary to the said Act, become a member of* [or as the case may be, *act as a member of*, or *maintain a correspondence or intercourse with*, or *by contribution of money or otherwise abet or support*] *a society* [describing the society], *which society is an unlawful combination and confederacy within the intent and meaning of the said Act: wherefore I* [or *we*], *the said* ——, *do adjudge that he the said A. B. do pay* [or *be imprisoned*] *as a penalty for his offence, in pursuance of the said Act. Given under my hand and seal* [or *our hands and seals*], *this* —— *day of* ——, *in the year of our Lord* ——, *and in the* —— *year of the reign of Her Majesty Queen Victoria.*

The justice of the peace, however, by or before whom any persons shall be convicted, may mitigate the punishment hereinbefore directed to be inflicted, so as the same be not thereby reduced to less than one-third of the punishment hereby directed to be inflicted as aforesaid, whether such punishment shall be by imprisonment or fine (*i*).

SENDING A CHALLENGE.

See "Challenge to fight."

SEPARATIST.

See "Oath."

SERVANT.

See "Embezzlement," "Larceny."

(*i*) 39 G. 3, c. 79, s. 9.

SESSIONS OF THE PEACE.

Court of General or Quarter Sessions.

What, and its jurisdiction.] This is a court of record, deriving its jurisdiction in counties, ridings, &c., from the commission of the peace, or from particular statutes. From the commission, it has jurisdiction to try all felonies, and all misdemeanors, except perjury and subornation (*a*), and forgery at common law; and also forgery, which is made felony by statute, is not within its cognizance (*b*). And the power of justices of the peace of a county, or of a recorder of a borough, to try prisoners at quarter sessions, is not suspended or affected by the assizes for the county being holden at the same time (*c*). This jurisdiction, however, is much narrowed by stat. 4 & 5 W. 4, c. 36, in those counties and places which are within the jurisdiction of the central criminal court. And it is now further enacted, by stat. 5 & 6 Vict. c. 38, s. 1, that after the passing of this Act, neither the justices of the peace acting in and for any county, riding, division, or liberty, nor the recorder of any borough, shall, at any session of the peace, or at any adjournment thereof, try any person or persons for any treason, murder, or capital felony, or for any felony which, when committed by a person not previously convicted of felony, is punishable by transportation beyond the seas for life;—or for any of the following offences, (that is to say,)

1. Misprision of treason:
2. Offences against the Queen's title, prerogative, person, or government, or against either house of parliament:
3. Offences subject to the penalties of præmunire:
4. Blasphemy and offences against religion:
5. Administering or taking unlawful oaths:
6. Perjury and subornation of perjury:
7. Making, or suborning any other person to make, a false oath, affirmation, or declaration, punishable as perjury or as a misdemeanor:

(*a*) *Ante*, pp. 319, 320.
(*b*) *R.* v. *Rigoy*, 8 Car. & P. 770.
(*c*) *Smith* v. *R.*, 18 Law J. 207, m.

8. Forgery:
9. Unlawfully and maliciously setting fire to crops of corn, grain, or pulse, or to any part of a wood, coppice, or plantation of trees, or to any heath, gorse, furze, or fern:
10. Bigamy, and offences against the laws relating to marriage:
11. Abduction of women and girls:
12. Endeavouring to conceal the birth of a child:
13. Offences against any provision of the laws relating to bankrupts and insolvents:
14. Composing, printing, or publishing blasphemous, seditious, or defamatory libels:
15. Bribery:
16. Unlawful combinations and conspiracies, except conspiracies or combinations to commit any offence which such justices or recorder respectively have or has jurisdiction to try when committed by one person:
17. Stealing or fraudulently taking, or injuring or destroying, records or documents belonging to any court of law or equity, or relating to any proceeding therein:
18. Stealing or fraudulently destroying or concealing wills or testamentary papers, or any documents or written instrument being, or containing evidence of, the title to any real estate or any interest in lands, tenements, or hereditaments:

Provided always, that nothing herein contained shall be construed to give authority to the justices of the peace acting in and for the cities of London and Westminster, the liberty of the tower of London, the borough of Southwark, and the counties of Middlesex, Essex, Kent, and Surrey, to try any person or persons for any offence committed or alleged to be committed within the jurisdiction of the central criminal court, which such justices are restrained from trying under the provisions of an Act passed in the fifth year of the reign of his late Majesty, intituled *An Act for establishing a new court for the trial of offences committed in the metropolis and parts adjoining.*

Also, a court of quarter sessions cannot try indictments for night poaching, under stat. 9 G. 4, c. 69, s. 9 (*c*); or indictments on stat. 9 & 10 Vict. c. 25, for malicious injuries to persons or property by fire, or by explosive or destructive substances (*d*).

Besides its jurisdiction under the commission of the peace, restricted by these statutes, the court of quarter sessions, from

(*c*) 9 G. 4, c. 69, s. 6.

(*d*) 9 & 10 Vict. c. 25, s. 15.

particular statutes, derives its jurisdiction as to appeals, coroner's fees, county rate, friendly societies, gaols, diverting and stopping highways, lunatic asylums, vagrants, and other matters noticed throughout this work.

And in boroughs within the Municipal Corporation Act (*e*), to which a separate court of quarter sessions is granted, such court shall have cognizance of all crimes, offences and matters whatsoever, cognizable by any court of quarter sessions of the peace for counties in England, and the recorder shall have power to do all things necessary for exercising such jurisdiction, notwithstanding his being sole judge thereof, as fully as any such last-mentioned court (*f*). And therefore, where it became a question whether the recorder of a borough had the appointment of the inspector of weights and measures for such borough, the court held that he had, because the appointment of such an officer for a county was in the court of quarter sessions for that county (*g*). So, a recorder of a borough, at sessions, has jurisdiction to try an appeal against an order of justices relating to pauper lunatics (*h*), or an appeal against an order of removal (*i*), or an appeal against a poor rate. And this jurisdiction is exclusive, and not merely concurrent with the quarter sessions of the county in which the borough is situate (*k*). But where a parish was partly in a borough, and partly in an adjoining county, and the occupier of premises in that part of the parish which was within the county appealed against a poor rate to the sessions of the county,—the court held the appeal to be rightly brought (*l*). But an appeal against a refusal by borough justices to grant an ale licence, cannot be to the borough sessions, because stat. 5 & 6 W. 4, c. 76, s. 105, takes from the recorder all authority as to such licences; but the appeal must be to the county sessions (*m*). And in boroughs to which a court of quarter sessions is not given, all such matters as are transacted at quarter sessions, shall be heard, decided, and transacted by the general or quarter sessions of the county in which such borough is situate (*n*). As to the jurisdiction and practice of the court of quarter sessions in cases of appeal, see *ante*, vol. 1, p. 63; and as to the manner in which their orders may be enforced by the court of Queen's Bench or a judge thereof, see vol. 1, p. 72. See also *Hawkes* v. *Field*, 20 Law J. 41, m.

(*e*) 5 & 6 W. 4, c. 76.
(*f*) Id. s. 105.
(*g*) *R.* v. *Recorder of Hull*, MS. 1838; 8 Ad. & El. 638.
(*h*) *R.* v. *St. Lawrence, Ludlow*, 11 Ad. & El. 170.
(*i*) *R.* v. *JJ. of Shropshire*, 2 Q. B. 85. *R.* v. *JJ. of Lancashire*, Id. *R.* v. *JJ. of Suffolk*, Id.; 10 Law J. 138, m. *R.* v. *St. Edmund's, Salisbury*, 2 Q. B. 72.
(*k*) *R.* v. *JJ. of Shropshire*, *supra*.
(*l*) *R.* v. *JJ. of Bridgwater*, MS. T. 1839; 10 Ad. & El. 711.
(*m*) *R.* v. *Deane*, 2 Q. B. 96.
(*n*) 1 Vict. c. 78, s. 50.

This court is styled the general quarter sessions, or quarter sessions of the peace, when it is holden quarterly, at the usual times appointed for that purpose; when holden otherwise, it is styled the general sessions of the peace.

As to petty and special sessions, see *ante*, vol. 2, pp. 1051, 1057.

When holden.] In counties, ridings, &c., the quarter sessions are holden in the first full week after the 11th October, after the 28th December, after the 31st March, and after the 24th June (*o*). And Sunday is deemed the first day of the week in this respect: and therefore, if the 11th October, &c., fall upon a Sunday, the sessions cannot be holden on the Monday, or during that week, but must be holden on the Monday, or some other day in the week next following. But the Act, in this respect, has been decided to be directory only, and that quarter sessions, holden out of such full week, were not on that account invalid (*p*). As to the Easter sessions, however, the justices at the Epiphany sessions may appoint two justices, who, as soon as the spring assizes for the county, &c., shall be appointed, may fix the day for holding the sessions, so as not to interfere with the assizes, such day not being earlier than the 7th March, or later than 22nd April, and give notice thereof by advertisement in such newspaper as the sessions shall direct (*q*).

In boroughs within the Municipal Act, the recorder shall hold a court of quarter sessions of the peace, once in every quarter of a year, or at such other or more frequent times as he may think fit, or the crown may direct (*r*).

Officers of the court.] The *custos rotulorum* is an officer, to whose custody the records and rolls of the sessions are committed. He is always one of the justices of the peace of the county, riding, &c., nominated by the crown, and appointed by the commission. See *ante*, vol. 2, p. 1049. The clerk of the peace is his deputy, and acts as clerk to the court of quarter sessions. The treasurer of the county, &c., is also an officer of the sessions, appointed and removable by them. As to the fees payable to the clerk of the peace, see stat. 57 G. 3, c. 91, 8 & 9 Vict. c. 114, and *R.* v. *Coles*, 15 Law J. 10, m. The sheriff is also an officer of the court; so are all constables within the county, &c. As to the appointment of high constables, see *ante*, p. 283, and as to the appointment of petty constables, *ante*, p. 289.

In boroughs, the town clerk has the custody of the re-

(*o*) 11 G. 4 & 1 W. 4, c. 70, s. 25.

(*p*) *R.* v. *JJ. of Leicestershire*, 7 B. & C. 6.

(*q*) 4 & 5 W. 4, c. 47.

(*r*) 5 & 6 W. 4, c. 76, s. 105.

cords, &c., of the quarter sessions, and the clerk of the peace acts as clerk to the court; there is also a treasurer, who, though appointed by the council, may be deemed an officer of the sessions, as part of his duty consists in paying money to the order of the court.

As to attornies, see *ante*, vol. 1, p. 149.

Routine of business.] The public business at the quarter sessions consists of the trial of offenders, the trial of appeals, and the hearing of motions upon different subjects of which the sessions have cognizance. The order in which this business is usually taken is different in different courts of quarter sessions, and depends very much upon the nature and quantity of business to be done; some begin with the appeals, some with the trials by jury, others with the motions; but it is a general rule with all, that once the trials by jury commence, the court will take no other business until they have been disposed of,—except short motions, which may be taken without inconvenience during the intervals of business.

Division of the court.] On the first day of any general or quarter sessions, the justices present may take into their consideration the state of the business likely to be brought before them; and if it appear to be such as, if heard by the whole court, is likely to occupy more than three days, including such first day, they may appoint two or more justices (one of whom shall be of the quorum) to sit apart in some place in or near the court, there to hear and determine such business as shall be referred to them, whilst the other justices are proceeding at the same time with the other business of the court (*a*). The clerk of the peace may appoint some person to record the proceedings of such second court, and the justices may appoint an additional crier (*b*).

And the like may be done at any adjourned sessions (*c*).

And now, by stat. 5 & 6 Vict. c. 38, s. 4, whenever any court of general or quarter sessions or adjourned sessions of the peace shall be assembled for the despatch of business thereunto belonging, and there shall be any order of the court in force for the appointment of a permanent chairman and deputy chairman of the said court, it shall be lawful for the justices then present, if it shall appear to them advisable, having regard to the business to be disposed of, to appoint two or more justices, one of whom shall be such deputy chairman, to sit apart in some convenient place in or near the court, there to hear and determine such business as shall be referred to them, whilst others of the justices, one of whom shall be

(*a*) 59 G. 3, c. 28, s. 1.
(*b*) Id. s. 3.
(*c*) 1 Vict. c. 19, s. 4.

the said chairman, are at the same time proceeding in the despatch of the other business of the same court, and that the proceedings so had by and before the justices so sitting apart, shall be as good and effectual in the law, as if the same were had before the court assembled and sitting as usual in its ordinary place of sitting, and shall be enrolled and recorded accordingly: and that the several provisions of an Act of the fifty-ninth year of the reign of King George the Third, intituled "An Act to empower magistrates to divide the court of quarter sessions," shall, so far as may be, extend and be applicable to the second court so to be holden as aforesaid.

So, in boroughs, if the mayor or two aldermen shall certify to the recorder, before the sessions, that the council of the borough have resolved that it will be expedient for the benefit of the inhabitants that a second court shall be formed, and it appear to the recorder that the quarter sessions are likely to last more than three days, he may at his discretion order such second court to be formed, and appoint under his hand and seal a barrister of not less than five years' standing (to be approved of by one of the principal secretaries of state) to preside, and try such felonies and misdemeanors as shall be referred to him, whilst the recorder is sitting in such quarter sessions; and the clerk of the peace shall appoint an assistant, and the recorder a crier, for such second court (*d*).

When and how adjourned.] If the sessions last more than one day, they must be adjourned to another, and so on from day to day until the business is finished; otherwise the sessions are at an end, and the justices cannot afterwards legally proceed with the business (*e*). Even if costs, ordered by the sessions, then remain untaxed, the clerk of the peace cannot afterwards tax them; but they must be taxed, if at all, before the court separate, as the order of sessions must specify the amount (*f*). The adjournment may be either to the next day, or to some other day prior to the next quarter sessions (*g*). In counties such adjournment must be by two justices at the least (*h*); in boroughs, by the recorder or his deputy, or (in their absence) by the mayor (*i*). But a case pending before them, they may respite from one sessions to another. And where instead of passing judgment upon a defendant who pleaded guilty to an indictment for an assault, they bound

(*d*) 1 Vict. c. 19, s. 1.

(*e*) *R.* v. *Polstead*, 2 Str. 1202.

(*f*) *Selwood* v. *Mount et al.*, 10 Law J. 121, m.; 1 Q. B. 726. *R.* v. *Long*, 10 Law J. 124, m.; 1 Q. B. 740. See *R.* v. *JJ. of Westmoreland*, 12 Law J. 113, m., per Coleridge, J., semb. cont.

(*g*) *R.* v. *Grince*, 10 Vin. Abr. 358; and see *R.* v. *Mullaney*, 6 Car. & P. 96.

(*h*) *R.* v. *Westrington*, 2 Bott, 981. *R.* v. *JJ. of Middlesex*, 5 B & Ad. 1113.

(*i*) 5 & 6 W. 4, c. 76, s. 106.

him over by recognizance to appear at the next sessions to receive judgment, and respited the judgment accordingly; and at the next sessions they again respited to the following sessions, when they passed judgment: this was holden to be correct (*k*).

SEWERS.

In any indictment or information for any felony or misdemeanor committed on or with respect to any sewer or other matter within or under the view, cognizance or management of any commissioners of sewers, it is sufficient to state such property to belong to such commissioners, without specifying the names of any of them (*a*).

SHEEP.

See "Cattle."

SHIP.

Offences relating to.] As to stealing any goods or merchandize in any vessel, barge or boat, in any port, or upon any navigable river or canal, see *ante*, p. 257. As to stealing from ships on the high seas, see *ante*, p. 323, tit. "*Piracy.*" As to stealing any part of a ship or vessel, in distress or wrecked, stranded or cast on shore,—or goods, merchandize or articles belonging to it, see *ante*, p. 258.

As to maliciously setting fire to, casting way, or in anywise destroying a ship or vessel, either with intent to murder, or whereby the life of any person shall be endangered, see *ante*, p. 296. As to maliciously setting fire to, or in anywise destroying a ship or vessel, with intent to prejudice the owner of the vessel or of the goods on board, or the underwriters of

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(*k*) *Keen* v. *R.*, 16 Law J. 180, m. (*a*) 7 G. 4, c. 64, s. 15.

such vessel, freight, or goods, see *ante*, p. 296. As to maliciously damaging a ship or vessel, otherwise than by fire, with intent to destroy or render it useless, see *ante*, p. 297. As to exhibiting false lights or signals with intent to bring a ship or vessel into danger; or doing any thing tending to the immediate loss or destruction of a ship in distress; or destroying any part of a ship in distress or wrecked, stranded or cast on shore;—or forcibly impeding or preventing a person endeavouring to save his life from such ship or vessel: see *ante*, pp. 297, 298.

Anchors, &c. found, to be delivered to receiver.] By stat. 9 & 10 Vict. c. 99, s. 3, receivers of droits of admiralty are appointed. And all persons who shall find, take up, or be in possession of any wreck of the sea, or any goods jetsam, flotsam, lagan, or derelict, or any boat, vessel, apparel, anchor, cable, tackle, stores, or materials, or any goods, merchandize, or other article whatsoever, which shall have been found floating or sunk at sea, or elsewhere in any tidal water, or cast, thrown, or stranded upon the shore, and whether the same be found above or below high-water mark, and whether wholly on land or wholly in the water, or partly on land and partly in the water, or shall find or take possession of any droit of admiralty of any description, whether such person shall claim to be entitled to such article or droit or not, shall forthwith send to the receiver or to the collector or comptroller of customs at the port or place nearest to which such articles or droits have been found a report in writing of all such articles or droits so found, containing an accurate and particular description of the marks (if any) thereon, and of the time and situation when and where the same were found, and shall also forthwith place such articles or droits at the disposal of the said receiver or officer of the customs; and every officer of the customs receiving such report shall forthwith transmit the same to the nearest receiver; and every person who shall keep possession of or retain, or conceal or secrete, any such wreck of the sea, jetsam, flotsam, lagan, derelict, boat, vessel, apparel, anchor, cable, tackle, stores, materials, goods, merchandize, or other article as aforesaid, or shall deface, take out, or obliterate any name, mark, or number thereon, or alter the same in any manner, or shall keep possession of or retain, or conceal or dispose of any droit of admiralty, or shall not forthwith report and place at the disposal of such receiver or officer of the customs any such article or droit in the manner aforesaid, shall forfeit all claim to salvage, and shall on conviction forfeit any sum not exceeding one hundred pounds, and also forfeit and pay double the value of the articles to the owner thereof, if claimed, or to Her Majesty, if the same become or be a

droit of admiralty; which double value may be recovered in the same manner as a penalty under this Act (*a*).

Purchasing such anchors, &c.] If any person shall knowingly or wilfully, and with intent to defraud the true owner thereof, or any person interested therein, purchase or receive any boat, anchor, cable, goods, or merchandize which may have been taken up, weighed, swept for, or taken possession of, if the provisions hereinbefore contained with regard to such articles shall not have been previously complied with: such person shall on conviction thereof be deemed guilty of receiving stolen goods, knowing the same to be stolen, and shall be punished accordingly (*b*).

Taking them to a foreign port.] And every person who shall convey, take, or tow to any foreign port or place any vessel, boat, anchor, chain, cable, or other article which may have been so found, weighed, swept for, received, or taken as aforesaid, and there sell or otherwise dispose of the same, shall be guilty of felony, and shall be transported for any term not exceeding seven years (*c*).

Cutting away or defacing buoy ropes.] If any person shall wilfully cut away, cast adrift, remove, alter, deface, sink, or destroy, or shall do or commit any act with intent and design to cut away, cast adrift, remove, alter, deface, sink, or destroy, or in any other way injure or conceal any boat, buoy, buoy rope, or mark, such person so offending shall, on being convicted of any such offence, be deemed and adjudged to be guilty of felony, and shall be liable to be transported for any term not exceeding seven years, or imprisoned for any number of years not exceeding three, with or without hard labour, at the discretion of the court in which such conviction shall have taken place (*d*).

SHIPWRECK.

See "Larceny," "Malicious Injuries," "Wreck."

(*a*) 9 & 10 Vict. c. 99, s. 5.
(*b*) Id. s. 20.
(*c*) 9 & 10 Vict. c. 99, s. 31.
(*d*) Id. s. 28.

SHOOTING.

See "Attempts to Murder."

SHOOTING AT A QUEEN'S SHIP.

See "Smuggling."

SHRUBS.

See "Larceny," "Malicious Injuries."

SIGN MANUAL.

See "Forgery," "Treason."

SILK GOODS.

See "Larceny," "Malicious Injuries.'

SLAUGHTERING HORSES.

See "Horse Slaughtering."

SLUICE.

See "Malicious Injuries."

SMUGGLING.

1. *Offences, &c.*

Making signals to smuggling vessels.] No person shall, after sunset and before sunrise, between the twenty-first day of September and the first day of April, or after the hour of eight in the evening and before the hour of six in the morning at any other time in the year, make, aid, or assist in making, any signal in or on board or from any vessel or boat, or on or from any part of the coast or shore of the United Kingdom, or within six miles of any part of such coast or shore, for the purpose of giving any notice to any person on board any smuggling ship or boat, whether any person so on board of such ship or boat be or be not within distance to notice any such signal: misdemeanor; and any person may arrest and detain the person who shall so offend, and convey him before any justice, who, if he see cause, shall commit the offender to the next county gaol, there to remain until delivered by due course of law; and it shall not be necessary to prove on any indictment or information that any ship or boat was actually on the coast; and the offender being duly convicted, shall, by order of the court before whom he shall be convicted, either forfeit and pay the penalty of one hundred pounds, or, at the discretion of such court, be committed to the common gaol or house of correction, there to be kept to hard labour for any term not exceeding one year (*a*). And the burthen of proof that such signal so charged as having been made for the purpose of giving such notice as aforesaid, was not made for such purpose, shall be upon the defendant (*b*).

Armed assemblies for smuggling.] "If any person to the number of three or more, armed with fire-arms or other offensive weapons, shall, within the United Kingdom, or within the limits of any port, harbour, or creek thereof, be assembled, in order to be aiding and assisting in the illegal landing, running, or carrying away of any prohibited goods, or any goods liable

(*a*) 16 & 17 Vict. c. 107, s. 244. (*b*) 16 & 17 Vict. c. 107, s. 245.

to any duties which have not been paid or secured,—or in rescuing or taking away any such goods as aforesaid, after seizure, from the officer of the customs or other officer authorized to seize the same, or from any person employed by them or assisting them, or from the place where the same shall have been lodged by them,—or in rescuing any person who shall have been apprehended for any of the offences made felony by this or any Act relating to the customs,—or in preventing the apprehension of any person who shall have been guilty of such offence,—or in case any persons to the number of three or more, so armed as aforesaid, shall, within the United Kingdom, or within the limits of any port, harbour or creek thereof, be so aiding or assisting:"—felony, transportation for life or not less than fifteen years, or imprisonment for not more than three years (*c*).

Shooting at boats, &c., or wounding officers.] And "if any person shall maliciously shoot at any vessel or boat belonging to Her Majesty's navy, or in the service of the revenue, within one hundred leagues of any part of the coast of the United Kingdom,—or shall maliciously shoot at, maim, or wound any officer of the army, navy, or marines, being duly employed for the prevention of smuggling, and on full pay, or any officer of customs or excise, or any person acting in his aid or assistance, or duly employed for the prevention of smuggling, in the due execution of his office or duty:"—felony, punishable with transportation or imprisonment, &c., as in the last case (*d*).

One of several smugglers being armed or disguised.] And "if any person, being in company with more than four other persons, be found with any goods liable to forfeiture under this or any other Act relating to the revenue of customs or excise,—or in company with one other person, within five miles of the sea coast or of any tidal river,—and carrying offensive arms or weapons, or disguised in any way:"—felony, transportation for seven years (*e*).

Assaulting or resisting officers, with violence.] "If any person shall by force or violence assault, resist, or obstruct any officer of the army, navy, or marines, being duly employed for the prevention of smuggling, and on full pay, or any officer of customs or excise, or other person duly employed for the prevention of smuggling, in the due execution of his or their office or duty, or any person acting in his or their aid;"—transportation for seven years, or imprisonment and hard labour for not more than three years (*f*).

(*c*) 16 & 17 Vict. c. 107, s. 248.
(*d*) Id. s. 249.
(*e*) 16 & 17 Vict. c. 107, s. 250.
(*f*) Id. s. 251.

2. *Prosecutions for Offences.*

For indictable offences, it does not appear to be necessary that the offender should be apprehended or brought before the magistrate by any officer of the revenue or by order of the commissioners. But it is provided that no indictment shall be preferred for the recovery of any penalty or forfeiture under this or any other Act relating to the customs or excise, unless preferred under the direction of the commissioners of his Majesty's customs or inland revenue (*a*). And such indictment must be preferred within three years after the offence committed (*b*). It may be preferred in any county, as if the offence were committed there (*c*).

SODOMY.

See "Unnatural Practices."

SOLDIERS.

See "Military Law," "Mutiny."

SOLICITING TO THE COMMISSION OF AN OFFENCE.

Soliciting or inciting a man to commit a felony or misdemeanor, which is not afterwards committed, is a misdemeanor at common law, and punishable with fine, or imprisonment, or both (*d*). If indeed, in consequence of such solicitation or incitement, the party were actually to commit the offence, the party who solicited or incited him to commit it would, in felony, be an accessory before the fact, in misdemeanor a principal (*e*).

Commitment:—*On* ——, *at* ——, *unlawfully did solicit and incite one G. D. to* —— [here state the offence]. *And you the said keeper*, &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 20.

(*a*) 16 & 17 Vict. c. 107, s. 301.
(*b*) Id. s. 303.
(*c*) Id. s. 304.
(*d*) *R.* v. *Higgins*, 2 East, 5.
(*e*) See *ante*, p. 6.

SPECIAL CONSTABLE.

See "Constable."

SPRING-GUNS, &c.

If any person shall set or place, or cause to be set or placed, any spring-gun, man-trap, or other engine calculated to destroy human life, or inflict grievous bodily harm, with the intent or whereby the same may destroy or inflict grievous bodily harm upon a trespasser or other person coming in contact therewith: misdemeanor (*a*). And persons allowing those already set to continue set, shall be deemed to have set them (*b*).

But the Act shall not extend to such spring-guns, &c. set in a dwelling-house, for its protection, from sunset to sunrise (*c*); nor to any gin or trap set with intent to destroy vermin (*d*).

Commitment:—*On ——, at ——, unlawfully did set and place, in a certain garden there situate, a certain spring-gun, which was then and there loaded and charged with gunpowder and divers leaden shot, with intent that the said spring-gun, so loaded and charged, should inflict grievous bodily harm upon any trespasser who might come in contact therewith: against the form of the statute in such case made and provided. And you the said keeper*, &c.

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 294.

STABBING.

See "Attempts to Murder."

STABLE.

See "Burning."

(*a*) 7 & 8 G. 4, c. 18, s. 1.
(*b*) Id. s. 3.
(*c*) 7 & 8 G. 4, c. 18, s. 4.
(*d*) Id. s. 2.

STACK OF CORN, &c.

See " Burning," " Malicious Injuries."

STAGE COACHES.

Forging plates.] If any person shall forge or counterfeit, or shall cause or procure to be forged, counterfeited, or resembled, any numbered plate directed to be provided, or which shall have been provided, made, or used, in pursuance of this Act, or shall wilfully fix or place, or shall cause or permit or suffer to be fixed or placed, upon any stage carriage or other carriage, any such forged or counterfeited plate,—or if any person shall sell or exchange or expose to sale or utter any such forged or counterfeited plate,—or if any person shall knowingly and without lawful excuse (the proof whereof shall lie on the person accused) have or be possessed of any such forged or counterfeited plate, knowing such plate to be forged or counterfeited: misdemeanor, fine, or imprisonment (with or without hard labour,) or both; and any officer of stamp duties, or any constable or other peace officer, or any toll-gate keeper, may seize and take away any such plate, in order that the same may be produced in evidence against such offender, or be disposed of as the commissioners of stamps shall think proper (*a*).

Injury by furious driving, &c.] "If any person whatever shall be maimed or otherwise injured, by reason of the wanton and furious driving or racing, or by the wilful misconduct, of any coachman or other person having the charge of any stage coach or public carriage, such wanton and furious driving or racing, or wilful misconduct of such coachman or other person, shall be a misdemeanor, and punishable by fine or imprisonment; but this is not to extend to hackney coaches, drawn by two horses only, and not plying for hire as stage coaches" (*b*).

(*a*) 2 & 3 W. 4, c. 120, s. 32. (*b*) 1 G. 4, c. 4.

STAITH.

See "Malicious Injuries."

STAMPS.

Having forged dies, stamps, &c.] If any person shall knowingly and without lawful excuse (the proof whereof shall lie on the person accused) have in his possession any false, forged, or counterfeit die, plate, or other instrument, or part of any such die, plate, or instrument, resembling or intended to resemble, either wholly or in part, any die, plate, or other instrument, provided, made, or used, by or under the direction of the commissioners of stamps, for the purpose of expressing or denoting any stamp duty;—or if any person shall knowingly and without lawful excuse (the proof whereof shall lie on the person accused) have in his possession any vellum, parchment, or paper, having thereon the impression of any such false, forged, or counterfeit die, plate, or other instrument, or part of any such die, plate, or other instrument as aforesaid, or having thereon any false, forged, or counterfeit stamp, mark, or impression resembling or representing, either wholly or in part, or intended or liable to pass or be mistaken for the stamp, mark, or impression of any such die, plate, or other instrument, knowing such false, forged, or counterfeit stamp, mark, or impression to be false, forged, or counterfeit;—or if any person shall fraudulently use, join, fix, or place, for, with, or upon any vellum, parchment or paper, any stamp, mark, or impression which shall have been cut, torn, or gotten off or removed from any other vellum, parchment or paper;—or if any person shall fraudulently erase, cut, scrape, discharge, or get out of or from any stamped vellum, parchment, or paper, any name, sum, date, or other matter or thing thereon written, printed, or expressed, with intent to use any stamp or mark then impressed, or being upon such vellum, parchment, or paper, or that the same may be used for any deed, instrument, matter, or thing in respect whereof any stamp duty is or shall or may be or become payable;—or if any person shall knowingly use, utter, sell, or expose to sale, or shall knowingly and without lawful excuse (the proof whereof shall lie on the person accused) have in his possession any stamped vellum, parchment, or paper, from or off or out of which any such

name, sum, date, or other matter or thing as aforesaid shall have been fraudulently erased, cut, scraped, discharged, or gotten as aforesaid :—felony, transportation for life or for not less than seven years, or imprisonment for not more than four years, nor less than two (*a*).

Search warrant for them.] And on information given before any justice of the peace, upon the oath of one or more credible person or persons, that there is just cause to suspect any person of being or having been in any way engaged or concerned in making any false or counterfeit die, plate, or other instrument,—or unlawfully marking or impressing any stamp, mark, or impression on any vellum, parchment, or paper with any such die, plate, or instrument,—or in the unlawful possession of any forged or counterfeit die, plate, or instrument, or of any vellum, parchment, or paper with any counterfeit stamp, mark, or impression thereon ;—or in unlawfully or fraudulently, or without due authority, marking or impressing any lawful stamp on any vellum, parchment or paper,—or in causing or procuring the same to be so marked or impressed, or in aiding, abetting, or assisting in so marking or impressing the same ;—or in the unlawful possession of any vellum, parchment, or paper, or other material, unlawfully or fraudulently or without due authority stamped or marked, contrary to any of the provisions or regulations contained in any Act relating to stamp duties,—or of being or having been in any way engaged or concerned in the fraudulent erasing, cutting, scraping, discharging or getting out of or from or off any stamped vellum, parchment, or paper, any matter or thing thereon written, printed, or expressed,—or in the unlawful possession of any stamped vellum, parchment, or paper from or off or out of which any matter or thing shall have been fraudulently erased, cut, scraped, discharged or gotten as aforesaid :—then and in every such case, such justice, by warrant under his hand, may cause any dwelling-house, room, workshop, outhouse, or other building, yard, garden, or other place, belonging to such suspected person, or where he shall be suspected of having been concerned in the commission of any such offence as aforesaid, or of secreting any such die, plate, or instrument, or any such vellum, parchment, or paper, or any of the machinery, implements, or utensils necessary or applicable to the commission of any such offence, to be searched, for any such stamped vellum, parchment, or paper, and for any such die, plate or instrument, machinery, implement, or utensil or other matter or thing as aforesaid ; and if any of the said several matters and things shall be found in

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(*a*) 3 & 4 W. 4, c. 97, s. 12.

any place so searched, or in the custody or possession of any person whatsoever not having the same by some lawful authority, the person finding them may seize the same, and carry them forthwith to the justice by whom such warrant shall be granted, or to any other justice of the peace having jurisdiction where the same shall be seized, who shall cause the same to be secured and produced in evidence against any person who shall or may be prosecuted for any of the offences aforesaid; and afterwards the thing so seized, whether produced in evidence or not, shall, by order of the court or judge before whom such offender shall be tried, or by order of some justice of the peace in case there shall be no such trial, be delivered over to the commissioners of stamps, to be defaced or destroyed, or otherwise disposed of, as the said commissioners shall think fit (*b*).

STEALING.

See "Larceny."

STEALING A CHILD.

See "Child Stealing."

STEAM ENGINE.

See "Malicious Injuries."

STILE.

See "Larceny," "Malicious Injuries."

STOCKS, PUBLIC.

See "Forgery."

(*b*) 3 & 4 W. 4, c. 97, s. 13.

STORES.

See "Marine Stores," "Queen's Stores."

STRAW.

See "Burning."

SUBORNATION.

See "Perjury."

SUBSEQUENT FELONY.

If any person shall be convicted of a felony not punishable with death, committed after a previous conviction for felony; transportation for life or not less than seven years, or imprisonment [with or without hard labour (*a*),] for not more than four years, and if a male, to be once, twice or thrice publicly or privately whipped (if the court shall so think fit) in addition to such imprisonment (*b*).

The commitment in this case, in practice, is for the second felony only, without mention of the first. Afterwards at the trial, the prisoner is tried for the second felony, without mention of the first; and if he be convicted, then the jury are called upon to decide whether he was formerly convicted of another felony (*c*); the evidence of which is a certificate of the conviction from the clerk having the custody of the records of the court where he was tried, and proof that the prisoner is the same person who was so tried (*d*).

SUICIDE.

See "Coroner."

(*a*) 7 & 8 G. 4, c. 28, s. 9.
(*b*) Id. s. 11.
(*c*) Id. s. 11; 14 & 15 Vict. c. 19; Arch. New Cr. Law, 624; and see *R.* v. *Shuttleworth*, 21 Law J. 36, m. *R.* v. *Key*, 21 Law J. 35, m. *R.* v. *Shrimpton*, 21 Law J. 37, m. *R.* v. *Clarke*, 22 Law J. 135, m.
(*d*) 7 & 8 G. 4, c. 28, s. 11.

SWANS.

See "Larceny."

THREATENING LETTER.

See "Letter, Threatening."

THREATENING TO ACCUSE.

See "Accusing."

TRAINING TO ARMS.

See "Arms, training to the use of."

TRANSPORTATION.

In what cases.] Many statutes assign the punishment of transportation for various offences. But the law upon the subject generally has been much mitigated by recent statutes. Formerly, where a statute punished an offence with transportation for life or a long term of years, or with imprisonment for two years or more, the judge at the trial had no authority to award a less punishment. But by stat. 9 & 10 Vict. c. 24, s. 1, he may award a less period of transportation, not less than seven years, and imprisonment with or without hard labour for any time, at his discretion (*a*). And now, by stat. 16 & 17 Vict. c. 99, no person shall be transported for a less term than

(*a*) 9 & 10 Vict. c. 24, s. 1.

fourteen years (*b*); but shall be sentenced to be kept in penal servitude instead (*c*); that is to say, instead of transportation for seven years, he may be sentenced to penal servitude for four years; instead of transportation for seven years and not more than ten, penal servitude for four years or not more than six; instead of transportation for ten years and not more than fifteen, penal servitude from six to eight years; instead of transportation for more than fifteen years, penal servitude from six to ten years; and instead of transportation for life, penal servitude for life (*d*). Where the period of transportation is for more than fourteen years, the judge may in his discretion award penal servitude instead (*e*). Also, Her Majesty, by warrant under her sign manual, may appoint places of confinement within England or Wales, either at land, or on board vessels in the river Thames or some other river, or port, or harbour, for the confinement of male offenders under sentence or order of transportation (*f*); where they may be kept to hard labour (*g*); and the time of such confinement shall be reckoned in discharge or part discharge of the term of their transportation (*h*). And they may be sent for that purpose to any of Her Majesty's penitentiaries in Great Britain (*i*). The like enactment is made as to female convicts (*k*). And provisions are made for the government of convict prisons (*l*).

Expenses of.] All fees payable to the sheriff or gaoler, on delivering out of custody an offender ordered to be transported, shall be paid by the county, &c., being first ascertained by the justices at their general or quarter sessions; and the clerk of the court shall be paid the usual fee for every order of transportation, by the treasurer of the county, &c. (*m*).

Furnishing spirits to convicts in prison.] If any person, in contravention of the regulations for the government of any place of confinement for male offenders under sentence or order of transportation, shall carry or bring, or attempt or endeavour to carry or bring, into any such place of confinement as aforesaid, or shall supply to any offender there confined, any spirituous or fermented liquor:—any officer belonging to such place of confinement may apprehend such person and carry him before a justice of the peace, who may hear and determine the offence in a summary way; and if he convict him, he may commit him to the common gaol or house of cor-

(*b*) 16 & 17 Vict. c. 99, s. 1.
(*c*) Id. s. 2.
(*d*) Id. s. 4.
(*e*) Id. s. 3.
(*f*) 5 G. 4, c. 84, s. 10.
(*g*) Id. s. 18.
(*h*) 5 G. 4, c. 84, s. 19.
(*i*) 10 & 11 Vict. c. 67.
(*k*) 16 & 17 Vict. c. 121.
(*l*) 13 & 14 Vict. c. 39.
(*m*) 5 G. 4, c. 84, s. 21.

rection for a time not exceeding three months, unless he immediately pay such sum not exceeding 20*l.*, or less than 10*l.*, as such justice shall impose,—one moiety to go to the informer, the other to be applied to the maintenance of the said place of confinement for convicts (*n*).

Aiding convicts to escape, or rescuing them.] If any person shall assist any felon to attempt his escape from on board any boat, ship or vessel carrying felons for transportation, or from the contractor for the transportation of such felons, or his agent, or from any other person to whom such felon shall be delivered for transportation :—felony, transportation for seven years (*o*). This does not extend to cases where an actual escape is effected (*p*).

And if any person shall rescue or attempt to rescue, or assist in rescuing or attempting to rescue, any such offender [convict] from the custody of the superintendent or overseer; or of any sheriff, gaoler or other person, conveying, removing, transporting or reconveying him or her,—or shall convey or cause to be conveyed any disguise, instrument for effecting escape, or arms, to such offender :—every such person shall be punishable in the same manner as if the convict were at the time in prison for the crime of which he was convicted (*q*).

Being at large before the expiration of sentence.] If any offender, sentenced or ordered to be transported, or who shall agree to transport or banish himself or herself on certain conditions, either for life or any number of years, shall be afterwards at large in any part of his Majesty's dominions, without some lawful cause, before the expiration of the term for which such offender shall have been sentenced or ordered to be transported, or shall have so agreed to transport himself or herself:—felony (*r*), transportation for life, and previously thereto imprisonment with or without hard labour for not more than four years (*s*).

Pardon, mode of granting.] By stat. 6 & 7 Vict. c. 7, s. 2, it is enacted, that after the time when this Act shall take effect in any place to which felons and offenders have been or may be transported by law, neither the governor nor lieutenant-governor of such place shall be empowered as heretofore to remit, either absolutely or conditionally, the whole or any part of the time for which any such felons or other offenders shall

(*n*) 1 W. 4, c. 39, s. 6.
(*o*) 16 G. 2, c. 31, s. 3.
(*p*) *R.* v. *Tilley*, 2 Leach, 662.
(*q*) 5 G. 4, c. 84, s. 22. See *ante*, tit. "Prison-breaking."
(*r*) 5 G. 4, c. 84, s. 22.
(*s*) 4 & 5 W. 4, c. 67.

have been or shall be hereafter transported to such place, but instead thereof the governor or lieutenant-governor shall from time to time, by an instrument in writing under his hand, recommend such felons or other offenders as he shall think fit to be recommended to Her Majesty for an absolute or conditional pardon; and in case Her Majesty shall, through one of her principal secretaries of state, signify her approval of any such recommendation, it shall be lawful for the governor or lieutenant-governor to grant such absolute or conditional pardon pursuant to such instructions as shall be sent to him by the secretary of state, by an instrument in writing under the seal of his government, which shall be deemed from the day of the date thereof to have, within such place or places as shall be specified in such pardon, but not elsewhere, the same effect in the law to all intents and purposes as if a general, absolute, or conditional pardon had passed on that day under the great seal of the United Kingdom.

TRAVERSE.

Formerly, in all cases of misdemeanors, the defendant was not bound to submit to be tried at the same assizes or sessions at which the bill was found, but had a right to traverse it, that is to say, to put off his trial, until the next following assizes or sessions for the same county. This was afterwards somewhat modified by stat. 1 G. 4, c. 4. But now, by stat. 14 & 15 Vict. c. 100, s. 26, that statute is repealed; and by sect. 27, no person, prosecuted, shall be entitled to traverse or postpone the trial of any indictment found against him at any session of the peace, session of oyer and terminer, or session of gaol delivery: provided always, that if the court, upon the application of the person so indicted or otherwise, shall be of opinion that he ought to be allowed a further time, either to prepare for his defence or otherwise, such court may adjourn the trial of such person to the next subsequent session, upon such terms as to bail or otherwise as to such court shall seem meet, and may respite the recognizances of the prosecutor and witnesses accordingly, in which case the prosecutor and witnesses shall be bound to attend to prosecute and give evidence at such subsequent session without entering into any fresh recognizance for that purpose.

TREASON.

Treasons within stat. 25 *Ed.* 3, *st.* 5, *c.* 2.] If a man compass or imagine the death of our lord the king, or of our lady his queen, or of their eldest son and heir; [and the words "our lord the king" have been holden to extend to the case of a queen regnant (*a*)].

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 564.

Or if a man violate the king's wife, or his eldest daughter unmarried, or the wife of the king's eldest son and heir,—

Or if a man levy war against our lord the king in his realm (*b*).

Or be adherent to the king's enemies in his realm, giving to them aid and comfort in the realm, or elsewhere:—

And thereof be attainted of open deed, by people of his condition:—

Or if a man counterfeit the king's great or privy seal, or his money—or bring false money into his realm, counterfeit of the money of England, knowing the same to be false: [which treason, however, as to the seals, is now punishable under stat. 1 W. 4, c. 66, s. 2, and 1 Vict. c. 84, s. 1 (*c*); and as to the coin, is punishable under stat. 2 W. 4, c. 34 (*d*)].

Or if a man slay the chancellor, treasurer, or the king's justices of the one bench or other, justices in eyre or of assize, or any other justices assigned to hear and determine,—being in their places, doing their offices.

Punishment, &c.] Treason, not relating to the coin and seals, is in all cases punishable with death. But the mode of death is peculiar; for by the sentence, in ordinary cases, the party is to be drawn to the place of execution upon a hurdle, he is there to be hanged by the neck until he be dead, his head shall be severed from his body, and his body divided into

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(*a*) See *R.* v. *Oxford*, 9 Car. & P. 525.
(*b*) See *R.* v. *Frost et al.*, 9 Car. & P. 129.
(*c*) See *ante*, p. 161.
(*d*) See *ante*, p. 75.

quarters (*e*). Or instead of being hanged, he may be ordered to be beheaded (*f*).

It may be necessary to mention, that in treason there are no accessories; all who in felony would be accessories before or after the fact, are in treason principals, and punishable as such.

Commitment:—*On ——, at ——, traitorously did compass and imagine the death of our sovereign lady Queen Victoria,* [or as the case may be]. *And you the said keeper,* &c.

The prosecution must be commenced within three years, except in the case of designing to assassinate the sovereign (*g*).

And the case must be proved by at least two witnesses, either both to the same overt act, or one to one overt act and another to another (*h*); except in cases where the crime consists of an attempt to injure in any manner the person of the Queen, in which case the trial may be as in murder (*i*); and except in treason relating to the coin and seals.

Felony, in compassing the death, &c., of the Queen.] If any person whatsoever shall, within the United Kingdom or without, compass, imagine, invent, devise, or intend to deprive or depose our most gracious lady the Queen, her heirs or successors, from the style, honour, or royal name of the imperial crown of the United Kingdom, or of any other of Her Majesty's dominions and countries, or to levy war against Her Majesty, her heirs or successors, within any part of the United Kingdom, in order by force or constraint to compel her or them to change her or their measures or counsels, or in order to put any force or constraint upon or in order to intimidate or overawe both houses or either house of parliament, or to move or stir any foreigner or stranger with force to invade the United Kingdom or any other Her Majesty's dominions or countries under the obeisance of Her Majesty, her heirs or successors, and such compassings, imaginations, inventions, devices, or intentions, or any of them, shall express, utter, or declare, by publishing any printing or writing, or by open and advised speaking, or by any overt act or deed, every person so offending shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be transported beyond the seas for the term of his or her natural life, or for any term not less than seven years, or to be imprisoned for any term not exceeding two years, with or without hard labour, as the court shall direct (*k*).

(*e*) 54 G. 3, c. 146, s. 1.
(*f*) Id. s. 2.
(*g*) 7 & 8 W. 3, c. 3.
(*h*) 7 & 8 W. 3, c. 3, s. 1.
(*i*) 5 & 6 Vict. c. 51, s. 1.
(*k*) 11 Vict. c. 12, s. 3.

It shall be lawful, in any indictment for a felony under this Act, to charge against the offender any number of the matters, acts, or deeds by which such compassings, imaginations, inventions, devices, or intentions as aforesaid, or any of them, shall have been expressed, uttered, or declared (*b*).

Provided, however, that nothing herein shall lessen the force of, or in any manner affect, anything enacted by stat. 25 Edw. 3, c. 2, of treason (*c*). That is to say, that the crown in these cases may, at its option, treat the offence as treason or felony, and prosecute accordingly. And if the facts or matters alleged in any indictment for any felony under this Act shall amount in law to treason, such indictment shall not by reason thereof be deemed void, erroneous, or defective; and if the facts or matters proved on the trial of any person indicted for any felony under this Act shall amount in law to treason, such person shall not by reason thereof be entitled to be acquitted of such felony; but no person tried for such felony shall be afterwards prosecuted for treason upon the same facts (*d*).

In the case of every felony punishable under this Act, every principal in the second degree and every accessory before the fact shall be punishable in the same manner as the principal in the first degree is by this act punishable; and every accessory after the fact to any such felony shall on conviction be liable to be imprisoned, with or without hard labour, for any term not exceeding two years (*e*).

Where the offence is by "open and advised speaking only," this Act may now be considered as expired (*f*).

The commitment may be the same as in treason (*ante*, p. 382), merely substituting the word "feloniously" for "traitorously." See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 567.

The costs of prosecution are not allowed (*g*).

Attempt to fire at, or do other injury to, Her Majesty.] If any person shall wilfully discharge or attempt to discharge, or point, aim, or present at or near to the person of the Queen, any gun, pistol, or any other description of fire-arms or of other arms whatsoever, whether the same shall or shall not contain any explosive or destructive material,—or shall discharge or cause to be discharged, or attempt to discharge or cause to be discharged, any explosive substance or material near to the person of the Queen,—or if any person shall wilfully strike or strike at, or attempt to strike or to strike at, the person of the

(*b*) 11 Vict. c. 12, s. 5.
(*c*) Id. s. 6.
(*d*) Id. s. 7.
(*e*) 11 Vict. c. 12, s. 8.
(*f*) See Id. s. 4.
(*g*) Id. s. 10.

Queen, with any offensive weapon, or in any other manner whatsoever,—or if any person shall wilfully throw or attempt to throw any substance, matter, or thing whatsoever at or upon the person of the Queen, with intent in any of the cases aforesaid to injure the person of the Queen, or with intent in any of the cases aforesaid to break the public peace, or whereby the public peace may be endangered, or with intent in any of the cases aforesaid to alarm Her Majesty,—or if any person shall, near to the person of the Queen, wilfully produce or have any gun, pistol, or any other description of fire-arms or other arms whatsoever, or any explosive, destructive, or dangerous matter or thing whatsoever, with intent to use the same to injure the person of the Queen, or to alarm Her Majesty:—every such person so offending shall be guilty of a high misdemeanor, and, being convicted thereof in due course of law, shall be liable, at the discretion of the court before which the said person shall be so convicted, to be transported beyond the seas for the term of seven years, or to be imprisoned, with or without hard labour, for any period not exceeding three years, and during the period of such imprisonment to be publicly or privately whipped, as often and in such manner and form as the said court shall order and direct, not exceeding thrice (*h*).

See the form of an indictment for this offence, and the evidence necessary to support it, *Arch. New Cr. Law*, 569.

TREES.

See "Larceny," "Malicious Injuries."

TRIAL BY JURY.

Arraignment and plea.] Upon a trial of a person for felony or misdemeanor, the first step is to arraign him, that is, the clerk of the peace reads the indictment to him, and asks him if he be guilty or not guilty. If he say that he is guilty, nothing remains to be done but to pass sentence upon him.

(*h*) 5 & 6 Vict. c. 51, s. 2.

If he say that he is not guilty, or any thing to that effect, the plea of not guilty is recorded, and the trial proceeds. But if, instead of thus pleading guilty or not guilty, he stand mute of malice, or will not answer directly to the indictment, the court may order a plea of not guilty to be entered for him (*a*). And if there be any doubt whether the defendant be not insane, in which case of course he could not be mute of malice, the court may immediately direct a jury to be sworn to try this collateral issue, namely, whether the defendant is mute of malice, or by the act of God: in which case, witnesses are examined as to his state of mind, and the jury find accordingly. If they find that he is mute of malice, the plea of not guilty is entered for him, as above mentioned; but if they find that he is mute by the act of God, or, in other words, insane, the finding is then recorded, and the court orders him to be kept in strict custody, until Her Majesty's pleasure shall be known (*b*).

After the defendant has pleaded not guilty, he may in general have leave to withdraw that plea and plead guilty. But it is entirely in the discretion of the court whether they will allow this or not (*c*).

As to special pleas,—*auterfcis acquit*, see *Arch. New Cr. Law*, 111; *auterfois convict*, Id. 114; pardon, Id. 114.

Challenge of jurors.] In trials for felony, as soon as the prisoner has pleaded, and a full jury have appeared, he is told by the clerk of the peace that the jurors are about to be called, and that if he wish to challenge any of them, he must challenge them as they come to the book to be sworn, and before they are sworn. Each juror is then called; and, if he be not challenged, or challenged and the challenge overruled, he is sworn. In felony the prisoner is entitled to challenge twenty jurors, peremptorily, without showing any cause for his challenges (*d*); and he may challenge any others for cause, showing the cause presently, and being prepared to prove it (*e*).

But in misdemeanors, and on the trial of collateral issues, the defendant is not entitled to a peremptory challenge, but must, if at all, challenge for cause.

So the counsel for the prosecution may challenge jurors, but it must be for cause. He is not obliged, however, to declare the cause, until the whole panel is exhausted (*f*).

See upon this subject generally, *Arch. New Cr. Law*, 163.

(*a*) 7 & 8 G. 4, c. 28, s. 2.

(*b*) 39 & 40 G. 3, c. 94, s. 2. *Ante*, p. 270.

(*c*) *R.* v. *Brown*, 17 Law J. 145, m.

(*d*) 6 G. 4, c. 50, s. 20.

(*e*) *R.* v. *Savage*, Ry. & M. 51. And see Arch. Sess. Pr. 249.

(*f*) See *R.* v. *Geach*, 9 Car. & P. 499.

Case stated, and defence.] As soon as twelve jurors are sworn, the clerk of the peace, in cases of felony, then charges them, by stating to them the substance of the indictment and plea; but this is omitted in cases of misdemeanor, if the prosecution be conducted by counsel. The counsel for the prosecution then states the case to the jury, and calls witnesses to prove it. These witnesses are cross-examined by the defendant or his counsel, and that he may have an opportunity of doing this with advantage, the law entitles the defendant to demand and have from the person having the custody thereof, copies of the depositions taken before the magistrates, on paying for them at the rate of three half-pence for each folio of ninety words (*g*). After the witnesses have been cross-examined, they are then re-examined by the counsel for the prosecution.

As soon as the prosecution is closed, the defendant has then a right to address the jury; or he may have counsel to address the jury for him, even in a case of felony (*h*). His witnesses (if any) are then called and sworn, examined, cross-examined, and re-examined. And if witnesses be examined for the defendant, the counsel for the prosecutor has a right to a general reply; but if the witnesses be merely to character, this right is seldom exercised. The chairman or recorder then sums up the evidence, and the jury bring in a verdict either of guilty or not guilty. If the verdict be "guilty," the chairman or recorder then passes sentence upon the prisoner. In what cases they may respite the judgment to the next sessions, see *ante*, p. 363.

See generally as to the proceedings at the trial, the verdict and judgment, *Arch. New Cr. Law*, 167, 171, 177; and as to reserving a case for the opinion of the Criminal Appeal Court, see *ante*, p. 22.

Costs.] In prosecutions for felonies, the court before which any person shall be prosecuted or tried for felony, is hereby authorized and empowered, at the request of the prosecutor, or of any other person who shall appear on recognizance or *subpœna* to prosecute or give evidence against any person accused of any felony, to order payment to the prosecutor of the costs and expenses which such prosecutor shall incur in preferring the indictment,—and also payment to the prosecutor and witnesses for the prosecution of such sums of money as to the court shall seem reasonable and sufficient to reimburse such prosecutor and witnesses for the expenses they have severally incurred in attending before the examining magistrate or magistrates and the grand jury, and in other-

(*g*) 6 & 7 W. 4, c. 114, s. 3. (*h*) 6 & 7 W. 4, c. 114, s. 1.

wise carrying on such prosecution, and also to compensate them for their trouble and loss of time therein;—and although no bill of indictment be preferred, it shall still be lawful for the court, where any person shall, in the opinion of the court, *bonâ fide* have attended the court in obedience to any such recognizance or *subpœna*, to order payment unto such person of such sum of money as to the court shall seem reasonable and sufficient to reimburse such person for the expenses which he or she shall have *bonâ fide* incurred by reason of attending before the examining magistrate or magistrates,—and by reason of such recognizance or *subpœna*,—and also to compensate such person for trouble and loss of time (*i*). Where the prosecutor and witnesses were bound over to prosecute and give evidence at the assizes as for a felony, but by the advice of counsel the indictment was preferred for a misdemeanor, in a case where costs were not allowed by the statute: upon application being made for costs, Williams, J., after taking time to consider, granted it (*k*).

In prosecutions for misdemeanors:—where any prosecutor or other person shall appear before any court, on recognizance or *subpœna*, to prosecute or give evidence against any person indicted of any assault with intent to commit felony,—of any attempt to commit felony,—of any riot,—of any misdemeanor, for receiving any stolen property, knowing the same to have been stolen,—of any assault upon a peace officer in the execution of his duty, or upon any person acting in aid of such officer,—of any neglect or breach of duty as a peace officer,—of any assault committed in pursuance of any conspiracy to raise the rate of wages,—of knowingly and designedly obtaining any property by false pretences,—of wilful and indecent exposure of the person,—of wilful and corrupt perjury, or of subornation of perjury,—[or unlawfully and carnally knowing and abusing any girl being above the age of ten years and under the age of twelve years,—unlawfully taking or causing to be taken any unmarried girl, being under the age of sixteen years, out of the possession and against the will of her father or mother, or of any other person having the lawful care or charge of her,—conspiring to charge any person with any felony, or to indict any person of any felony,—and conspiring to commit any felony (*l*); and in every case of assault, brought before justices of the peace for summary decision, under stat. 9 G. 4, c. 31, in which the justices shall be of opinion that the same is a fit subject for indictment, and shall thereupon bind the complainant and witnesses in recognizance to prosecute and give evidence at the assizes or sessions of the peace (*m*)]:

(*i*) 7 G. 4, c. 64, s. 22.
(*k*) *R.* v. *Hanson*, 2 Car. & K. 912.
(*l*) 14 & 15 Vict. c. 55, s. 2.
(*m*) Id. s. 3.

every such court is hereby authorized and empowered to order payment of the costs and expenses of the prosecutor and witnesses for the prosecution, together with a compensation for their trouble and loss of time, in the same manner as courts are hereinbefore authorized and empowered to order the same in cases of felony;—and although no bill of indictment be preferred, it shall still be lawful for the court, where any person shall have *bonâ fide* attended the court, in obedience to such recognizance, to order payment of the expenses of such person, together with a compensation for his or her trouble and loss of time, in the same manner as in cases of felony (*n*). This statute, however, does not extend to cases where the indictment is removed by *certiorari* at the instance of the prosecutor, and afterwards tried on the civil side at the assizes (*o*).

As to the costs of attending before the examining magistrate: by stat. 7 G. 4, c. 64, s. 22, already noticed (*supra*), prosecutors and witnesses, in cases of felony, are to be allowed their expenses in attending before the examining magistrate or magistrates; and the section also enacts, "that the amount of the expenses of attending before the examining magistrate or magistrates, and the compensation for trouble and loss of time therein, shall be ascertained by the certificate of such magistrate or magistrates, granted before the trial or attendance in court, if such magistrate or magistrates shall think fit to grant the same:" the other expenses to be ascertained by the proper officer of the court. By that section, the magistrates' certificate was conclusive as to the amount of those expenses. But this is no longer so; for by stat. 14 & 15 Vict. c. 55, s. 6, the amount of such expenses shall also be ascertained by the proper officer of the court, but the amount thereof, as so ascertained, shall not exceed the amount mentioned in the certificate of the examining magistrate. So that now, it should seem, the prosecutor and witnesses are entitled to be allowed their expenses of attending before the examining magistrate, only in case such magistrate shall grant a certificate, and if granted, the amount therein allowed must be examined, and may be reduced on taxation, by the taxing officer of the court.

The 23rd sect. of stat. 7 G. 4, c. 64, above mentioned, which granted costs in certain cases of misdemeanors, contained a proviso, "that in cases of misdemeanor, the power of ordering the payment of expenses and compensation, shall not extend to the attendance before the examining magistrate." But this proviso is now repealed by stat. 14 & 15 Vict. c. 55, s. 1; and as by stat. 7 G. 4, c. 64, s. 23, the prosecutors

(*n*) 7 G. 4, c. 64, s. 23.

(*o*) *R.* v. *Johnson et al.*, Ry. & M. 173. *R.* v. *Oates*, Ry. & M. 175. *R.* v. *Richards*, MS. Tr. 1828.

and witnesses are entitled to their expenses in the cases of misdemeanor therein mentioned, "in the same manner as in cases of felony," they are now entitled to these costs of attending before the examining magistrate.

As to costs in prosecutions for offences at sea: it shall be lawful for the judge of the court of Admiralty, [and for the judges of the Central Criminal Court (*p*), or judges of assize, and commissioners of oyer and terminer (*q*)], in every case of felony, and in every case of misdemeanor of the denominations hereinbefore enumerated, committed upon the high seas, to order the assistant to the counsel for the affairs of the Admiralty and navy, to pay such costs, expenses, and compensation to prosecutor and witnesses, in like manner as other courts may order the treasurer of the county to pay the same.

As to costs in other cases: upon an indictment for a nuisance by a steam engine, it is enacted by stat. 1 & 2 G. 4, c. 41, that it shall be lawful for the court, by which judgment ought to be pronounced, in case of conviction upon any such indictment, to award such costs as shall be deemed proper and reasonable, to the prosecutor or prosecutors, to be paid by the party or parties so convicted as aforesaid, such award to be made either before or at the time of pronouncing final judgment, as to the court may seem fit.

In prosecutions for misdemeanors under stat. 12 & 13 Vict. c. 76 (*procuring the defilement of women*), the prosecutor and witnesses shall be allowed their expenses, in the same manner as in cases of felony (*r*).

In prosecutions for offences under stat. 14 & 15 Vict. c. 19, (namely, misdemeanors in being found at night, armed, with intent to break and enter a dwelling-house, or with implements of house-breaking, or disguised, or in a dwelling-house with intent to commit a felony,—or in inflicting grievous bodily harm with or without weapon,—or for felony, in using chloroform, &c., with intent to commit or assist another in committing a felony), the court may allow the expenses of the prosecution in all respects as in cases of felony (*s*).

But in prosecutions for felonies and offences against the Queen and government, under stat. 11 Vict. c. 12, the court shall not order payment to the prosecutor or witnesses of any costs which shall be incurred in preferring or prosecuting the indictment (*t*).

The justices at quarter sessions shall make regulations as to the rate of costs and expenses which shall be allowed (*u*). But

(*p*) 4 & 5 W. 4, c. 36, s. 22.
(*q*) 7 & 8 Vict. c. 2, s. 1.
(*r*) 12 & 13 Vict. c. 76, ss. 2, 3.
(*s*) 14 & 15 Vict. c. 19, s. 14.
(*t*) 11 Vict. c. 12, s. 10.
(*u*) 7 G. 4, c. 64, s. 26.

they cannot make a general rule to allow a certain sum for the whole amount of the costs in any class of cases (*x*).

The court of quarter sessions also may order the sheriff to pay to any person, who shall appear to have been active in or towards the apprehension of any person charged with receiving stolen property knowing it to have been stolen, such sum as they shall deem sufficient to compensate him for his expenses, exertions and loss of time in and towards such apprehension (*y*); and the sheriff shall be repaid by the treasury (*z*).

TRIAL BY JUSTICES, WITHOUT JURY.

1. *Trial by Justices, in cases of Larceny to a small amount.*

Jurisdiction.] Where any person is charged before any justices of the peace in petty sessions assembled [or before one of the police magistrates of the metropolis, or any stipendiary magistrate of a city, town, liberty, borough or district, sitting in a police court, &c. (*a*)], with having committed simple larceny, and the value of the property stolen does not, in the judgment of such justices, exceed five shillings,—or with having attempted to commit larceny from the person, or simple larceny,—it shall be lawful for such justices [or magistrate] to hear and determine the offence in a summary way; and, if the person charged shall confess the same, or if such justices [or magistrate], after hearing the whole case for the prosecution and for the defence, shall find the charge to be proved, then the said justices may convict the person charged, and commit him to the common gaol or house of correction, there to be imprisoned, with or without hard labour, for any period not exceeding three months (*b*); or if they or he find the offence

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(*x*) *R.* v. *JJ. of Glamorganshire*, 10 Law J. 172, m.
(*y*) 7 G. 4, c. 64, s. 28.
(*z*) 7 G. 4, c. 64, s. 29.
(*a*) 18 & 19 Vict. c. 126, s. 16.
(*b*) Id. s. 1.

not proved, they shall dismiss the chargo, and make out and deliver to the person charged a certificate under their hands stating the fact of such dismissal; provided always, that if the person charged do not consent to have the case heard and determined by such justices [or magistrate],—or it appear to such justices [or magistrate] that the offence is one which, owing to a previous conviction of the party charged, is punishable by law with transportation or penal servitude,—or if such justices [or magistrate] be of opinion that the charge is from any other circumstances fit to be made the subject of prosecution by indictment, rather than to be disposed of summarily,—such justices [or magistrate] shall, instead of summarily adjudicating thereon, deal with the case in all respects as if this Act had not been passed (*c*).

Proceedings.] Where a person is thus charged with larceny, the witnesses for the prosecution are first examined upon oath, in the ordinary way. And then, if the justices or magistrate propose to dispose of the case summarily under the foregoing provision, one of such justices [or magistrate] shall (before calling upon the person charged for any statement he may wish to make) state to him the substance of the charge against him, and shall say to him these words, or words to the like effect: "Do you consent that the charge against you shall be tried by [us], or do you desire that it shall be sent for trial by a jury at the sessions [or assizes" as the case may be]; and if such person consent, then the justices [or magistrate] shall reduce the charge into writing, and read it to him, and ask him whether he is guilty or not of the charge, and if he say he is guilty, the justices shall then proceed to pass such sentence upon him as may by law be passed (*d*).

But if the person charged shall say that he is not guilty, the justices [or magistrate] shall then inquire of him whether he has any defence to make to such charge, and if he say that he has, the justices [or magistrate] shall hear such defence, and then proceed to dispose of the case summarily (*e*).

The statute, however, contains a proviso, that if upon the hearing of the charge, the justices [or magistrate] shall be of opinion that there are circumstances in the case which render it inexpedient to inflict any punishment, they may dismiss the person charged, without proceeding to a conviction (*f*).

The defendant shall be allowed to make his full answer and defence, and to have all witnesses examined and cross-examined by counsel or attorney (*g*).

(*c*) 18 & 19 Vict. c. 126, s. 1.
(*d*) Id. s. 2.
(*e*) Id.
(*f*) 18 & 19 Vict. c. 126, s. 1.
(*g*) Id. s. 4.

Conviction.] If they convict him, the conviction may be in the following form, or to the like effect (*d*) :—

—— } *Be it remembered, that on the* —— *day of* ——,
to wit. } *in the year of our Lord* ——, *at* —— *in the said* [county], *A. B. being charged before us the undersigned* —— *of Her Majesty's justices of the peace for the said county, and consenting to our deciding upon the charge summarily, is convicted before us, for that* [*he the said A. B.*, &c., stating the offence, and the time and place when and where committed] ; *and we adjudge the said A. B. for his said offence to be imprisoned in the* [house of correction] *at* —— *in the said* [county], [*and there kept to hard labour*] *for the space of* ——.

Given under our hands and seals the day and year first above mentioned, at ——, *in the county aforesaid.*

J. S. (L. S.)
H. M. (L. S.)

This conviction shall have the effect of a conviction for the same offence upon an indictment, except that it shall not be attended with forfeiture (*e*). It shall not be quashed for want of form (*f*).

Commitment. If the defendant be convicted, his committal may be in the following form (*g*) :—

—— : *To the Constable of* ——, *and to the Keeper of the* [House of Correction] *at* —— *in the said* [county] *of* —— :

Whereas at a court of petty sessions, holden this day at ——, *in the* [county] *of* ——, *for the division of* ——, *in the said* [county], *A. B. being charged before us the undersigned,* [two] *of Her Majesty's justices of the peace for the said* [county], *and consenting to our deciding upon the charge summarily, was duly convicted before us, for that* [here state the offence as in the conviction] ; *and we thereby adjudged the said A. B. for his said offence to be imprisoned in the* [house of correction] *at* —— *in the said* [county], *and there kept to hard labour for the space of* —— : *These are therefore to command you the said constable to take the said A. B., and him safely to convey to the* [house of correction] *at* —— *aforesaid, and there to deliver him to the keeper thereof, together with this precept; and we do hereby command you the said keeper of the said* [house of correction] *to receive the said A. B. into your custody in the said* [house of correction], *there to imprison him and keep*

(*d*) 18 & 19 Vict. c. 126, s. 1, sch. A.
(*e*) Id. s. 11.
(*f*) Id. s. 12.
(*g*) This form is not given by the statute.

him to hard labour for the space of ——; *and for your so doing this shall be your sufficient warrant.*

Given under our hands and seals, at the court of petty sessions aforesaid, this —— *day of* ——, *in the year of our Lord* ——.

J. S. (L. S.)
H. M. (L. S.)

This commitment shall not be held void by reason of any defect therein, if it be therein alleged that the offender has been convicted, and there be a good and valid conviction to sustain the same (*i*).

Dismissal of the charge.] If the justices or magistrate find the offence not proved, they shall dismiss the charge, and make out and deliver to the person charged a certificate of such dismissal under their hands, in the following form or to the like effect (*k*):—

—— to wit. } *We,* —— *of Her Majesty's justices of the peace for the county of* ——, *certify that on the* —— *day of* —— *in the year of our Lord* ——, *at* —— *in the said* county], *A. B. being charged before us, and consenting to our deciding upon the charge summarily, for that* [*he the said A. B.*, stating the offence charged, and the time and place when and where alleged to be committed], *we did, having summarily adjudicated thereon, dismiss the said charge.*

Given under our hands and seals this —— *day of* ——, *at* ——, *in the county aforesaid.*

J. S. (L. S.)
H. M. (L. S.)

By this certificate, the party shall be released from all further or other criminal proceedings for the same cause (*l*).

2. *Trial by Justices, where a Party charged pleads Guilty.*

Jurisdiction and Proceedings.] Where any person is charged before any justices at such petty sessions as aforesaid [or before one of the police magistrates of the metropolis, or any stipendiary magistrate of a city, town, liberty, borough, or district sitting in a police court, &c. (*m*)], with simple

(*i*) 18 & 19 Vict. c. 126, s. 12.
(*k*) Id. s. 1, sch. B.
(*l*) 18 & 19 Vict. c. 126, s. 12.
(*m*) Id. s. 3.

larceny (the property alleged to have been stolen exceeding in value five shillings),—or stealing from the person,—or larceny as a clerk or servant,—and the evidence, when the case on the part of the prosecution has been completed, is in the opinion of such justices [or magistrate] sufficient to put the person charged on his trial for the offence with which he is charged,—such justices [or magistrate] (if the case appear to them to be one which may properly be disposed of in a summary way, and may be adequately punished by virtue of the powers of this Act,) shall reduce the charge into writing, and read it to the person, and shall then ask him whether he is guilty or not of the charge; and if such person shall say that he is guilty, such justices shall thereupon cause a plea of guilty to be entered upon the proceedings, and shall and may convict him of such offence, and commit him to the common gaol or house of correction, there to be imprisoned, with or without hard labour, for any term not exceeding six calendar months (*m*).

But before they ask him whether he is guilty or not, they must "explain to him that he is not obliged to plead or answer before them at all, and that if he do not plead or answer before them, he will be committed for trial in the usual course" (*n*). If, notwithstanding this caution, he plead guilty, the justices or magistrate order his plea to be entered, and convict him, and commit him to the gaol or house of correction.

Conviction.] If they convict him, the conviction may be in the following form, or to the like effect (*o*):—

—— to wit. } *Be it remembered, that on the —— day of ——, in the year of our Lord ——, at ——, in the said* [county], *A. B. being charged before us the undersigned* [two] *of Her Majesty's justices of the peace for the said* [county], *for that* [*he the said A. B.*, &c., stating the offence, and the time and place when and where committed], *and pleading guilty to such charge, he is thereupon convicted before us of the said offence; and we adjudge the said A. B. for his said offence to be imprisoned in the* [house of correction] *at ——, in the said* [county], [*and there kept to hard labour*] *for the space of ——.*

Given under our hands and seals, the day and year first above mentioned, at ——, in the county aforesaid.

J. S. (L. S.)
H. M. (L. S.)

This conviction shall have the effect of a conviction for the

(*m*) 18 & 19 Vict. c. 126, s. 3.
(*n*) Id.
(*o*) 18 & 19 Vict. c. 126, s. 3, sch. C.

same offence upon indictment, except that it shall not be attended with forfeiture(*p*). It shall not be quashed for want of form (*q*). And the party convicted, shall be released from all further or other proceedings for the same cause (*r*).

Commitment.] If the defendant be convicted, his committal may be in the following form, or to the like effect (*s*) :—

——: *To the Constable of* ——, *and to the Keeper of the* [house of correction] *at* ——, *in the said* [county] *of* ——.

Whereas at a court of petty sessions, holden this day at ——, *in the* [county] *of* ——, *for the division of* ——, *in the said* [county], *A. B. being charged before us the undersigned,* [two] *of Her Majesty's justices of the peace for the said* [county], *for that* [here state the offence as in the conviction], *and pleading guilty to such charge, he was thereupon convicted before us of the said offence; and we adjudged the said A. B. for his said offence to be imprisoned in the* [house of correction] *at* ——, *in the said* [county], *and there kept to hard labour for the space of* ——: *These are therefore to command you the said constable to take the said A. B., and him safely to convey to the* [house of correction] *at* —— *aforesaid, and there to deliver him to the keeper thereof, together with this precept; and we do hereby command you, the said keeper of the said* [house of correction], *to receive the said A. B. into your custody, in the said* [house of correction], *there to imprison him* [*and keep him to hard labour*] *for the space of* ——; *and for your so doing this shall be your sufficient warrant.*

Given under our hands and seals, at the court of petty sessions aforesaid, this —— *day of* ——, *in the year of our Lord* ——.

J. S. (L. S.)
H. M. (L. S.)

This commitment shall not be held void by reason of any defect therein, if it be therein alleged that the offender has been convicted, and there be a good and valid conviction to sustain the same (*t*).

(*p*) 18 & 19 Vict. c. 126, s. 11.
(*q*) Id. s. 12.
(*r*) Id.
(*s*) This form is not given by the statute.
(*t*) 18 & 19 Vict. c. 126, s. 13.

3. *Costs, Restitution of Property, &c.*

Expenses of prosecution.] Where any charge is summarily adjudicated upon under this Act, or an offender is under this Act convicted by justices in petty sessions upon a plea of "guilty," it shall be lawful for the justices by whom such charge has been adjudicated upon or offender convicted, upon the request of any person who has preferred the charge or appeared to prosecute or give evidence against such person charged, if such justices think fit so to do, to grant a certificate to such person of the amount of the compensation which such justices may deem reasonable for his expenses, trouble, and loss of time therein, subject nevertheless to the regulations made or to be made as hereinafter mentioned; and every such certificate shall have the effect of an order for the payment of the expenses of a prosecution made under stat. 7 G. 4, c. 64, and the Acts amending the same; and the amount mentioned in such certificate shall be paid in like manner as the money mentioned in such order; and all certificates to be granted under this Act shall be subject to the like regulations made or to be made in relation thereto, as the certificates mentioned in the said Act (*a*), to be granted by examining magistrates, are or may be subject to under stat. 14 & 15 Vict. c. 55 (*b*). And the amount of the fees payable to the clerks of the magistrates in petty sessions in respect of any proceeding under this Act,—and of the fees payable to the clerks of the peace for filing the depositions, conviction or certificate of dismissal,—and of all such expenses of apprehending the person charged, and detaining him in custody, and of such other expenses as are now by law payable when incurred before a commitment for trial,—may be added to the certificate for compensation aforesaid, and paid in the like manner (*c*).

Restitution of property.] The justices or magistrate by whom any person is convicted under this Act, may order restitution of the property stolen, taken, or obtained by false pre-

(*a*) 7 G. 4, c. 64.
(*b*) 18 & 19 Vict. c. 126, s. 14.
(*c*) 18 & 19 Vict. c. 126, s. 14.

tences, in those cases in which the court, before whom the person convicted would have been tried but for this Act, may be by law authorized to order restitution (*d*).

Conviction to be returned to sessions.] The justices or magistrate before whom any person is convicted under this Act shall transmit the conviction, with the written charge, the depositions of the witnesses for the prosecution and for the defence, and the statement of the accused, to the next court of general or quarter sessions for the county or place, there to be kept by the proper officer among the records of the court; and a copy of such conviction, certified by the proper officer of the court, or proved to be a true copy, shall be sufficient evidence to prove a conviction for the offence mentioned therein, in any legal proceeding whatever (*e*).

Case how adjourned to petty sessions.] Where any person is charged before any justice or justices with any offence mentioned in this Act, and in the opinion of such justice or justices the case may be proper to be disposed of by justices in petty sessions under this Act, the justice or justices before whom such person is charged may, if he or they see fit, remand the accused for further examination to the next petty sessions, in like manner in all respects as a justice or justices are authorized to remand a party accused under stat. 11 & 12 Vict. c. 42, s. 21 (*f*).

And if any person suffered to go at large upon entering into such recognizance as justices under such last-mentioned Act are authorized to take on the remand of a party accused, do not afterwards appear pursuant to such recognizance, then the justices before whom he ought to have appeared, shall certify (under the hands of two of them), on the back of the recognizance, to the clerk of the peace of the county or place, the fact of such non-appearance, and such recognizance shall be proceeded upon in like manner as other recognizances; and such certificate shall be deemed sufficient *primâ facie* evidence of such non-appearance (*g*).

Interpretation clause, &c.] In the construction of this Act, "county" shall be construed to include riding, &c., "borough," to include city, &c., "property" to include every thing included under the words "chattel, money or valuable security," as used in the stat. 7 & 8 G. 4, c. 29; and in the case of any "valuable security" the value of the share, interest, or deposit to which the security may relate, or of the

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(*d*) 18 & 19 Vict. c. 126, s. 8.
(*e*) Id. s. 7.
(*f*) 18 & 19 Vict. c. 126, s. 5.
(*g*) Id. s. 6.

money due thereon or secured thereby, and remaining unsatisfied, or of the goods or other valuable thing mentioned in the warrant or order, shall be deemed to be the value of such security (*h*).

There are a few other clauses in the Act, which may here be noticed:

1. The town hall, court house, &c. of the county, city, or borough, may be used for the petty sessions to be holden under this Act (*i*).

2. "Every petty sessions for the purposes of this Act shall be an open public court, and shall be the petty sessions holden for a petty sessional division; and a written or printed notice of the days and hours for holding such petty sessions shall be posted or affixed by the clerk to the justices of petty sessions upon the outside of some conspicuous part of the building or place where the same are held (*j*)."

3. The stat. 11 & 12 Vict. c. 43, shall not apply to any of the proceedings under this Act (*k*). Nor shall this Act affect the statutes 10 & 11 Vict. c. 82, or 13 & 14 Vict. c. 37, relating to juvenile offenders (*l*).

4. The section 18, makes provision for compensation to clerks of the peace and other officers.

TURNPIKE GATE.

See "Malicious Injuries."

UNLAWFUL ASSEMBLIES.

See "Seditious Assemblies," "Riot."

UNLAWFUL OATHS.

See "Oaths."

(*h*) 18 & 19 Vict. c. 126, s. 23.
(*i*) Id. s. 15.
(*j*) Id. s. 9.
(*k*) 18 & 19 Vict. c. 126, s. 10.
(*l*) Id. s. 17.

UNNATURAL OFFENCES.

"Every person convicted of the abominable crime of buggery, committed either with mankind or with any animal, shall suffer death as a felon (*a*)." The offence is to be deemed complete, upon proof of penetration only, without proof of actual emission (*b*), in the same manner as in rape. See *ante*, tit. "*Rape.*"

Commitment:—*On* ——, *at* ——, *feloniously, wickedly, and against the order of nature did carnally know one C. D., and then and there with the said C. D. feloniously did commit and perpetrate the abominable crime of buggery. And you the said keeper*, &c.

See forms of indictments for these offences, and the evidence necessary to support them, *Arch. New Cr. Law*, 309, 311; and of an indictment for an attempt to commit them, *Id.* 310.

VARIANCE.

See "Amendment."

VENUE.

In the case of indictable offences, it is necessary that justices of the peace should understand the proper venue for each offence, that is to say, the county or other jurisdiction within which the offender may be tried, in order that they may commit him accordingly. The general rule is, that the offender,

(*a*) 9 G. 4, c. 31, s. 15.

(*b*) Id. s. 18.

if tried at the assizes, must be tried in that county in which he committed the offence; or if tried at the sessions, he must be tried in like manner in that county, riding, division or borough, within which the offence was committed, and for which the sessions are holden. The following instances are either enlargements of this rule, or exceptions to it.

Offences on the borders of counties.] Where any felony or misdemeanor is committed on the boundary or boundaries of two or more counties, or within 500 yards of such boundary, or shall be begun in one county and completed in another, the offender may be tried, &c., in either county (*a*).

Offences during a journey or voyage.] Where any felony or misdemeanor shall be committed on any person or property in or upon any coach, waggon, cart or other carriage employed in any journey, or on board of any vessel employed on a journey or voyage upon any navigable river, canal or inland navigation:—the offender may be tried, &c., in any county through any part of which the carriage or vessel shall have passed in the course of the journey or voyage (*b*).

Offences at sea.] For all offences committed at sea, which are punishable in this country, the offenders are triable by the Central Criminal Court in London; but the commitment of the offender is to the gaol of the county, &c., where he is apprehended or committed, after which the gaoler transmits a copy of the warrant to the Home Office, and the offender is thereupon removed to London for trial (*c*).

Offences abroad.] If any British subject shall be charged in England with any murder or manslaughter, or the offence of being accessory before or after the fact to murder, or after the fact to manslaughter, committed on land out of the United Kingdom, whether within the King's dominions or without:—any justice of the peace of the county or place where the person so charged shall be, may take cognizance of the offence, and proceed therein as if it had been committed, within the limits of his ordinary jurisdiction (*d*). And the offender shall afterwards be tried by a special commission, in such county as the lord chancellor shall appoint (*e*).

Where a Spaniard, who sailed to the East Indies, as seaman, on board an English ship, afterwards settled at Zanzibar, (an

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(*a*) 7 G. 4, c. 64, s. 12.
(*b*) Id. s. 13. See *R.* v. *Sharp*, 24 Law J. 40, m.
(*c*) *Ante*, p. 13.
(*d*) 9 G. 4, c. 31, s. 7.
(*e*) Id.

island under the government of an Arab chief,) with the captain of the ship; having a quarrel with an English seaman on shore, this Spaniard struck him several blows, of which blows the seaman afterwards died on board of his ship, which was lying in the harbour. The Spaniard being indicted in this country for the manslaughter, Vaughan and Bosanquet, JJ., held that the indictment could not be sustained; the prisoner was not at the time a "British subject," within the meaning of stat. 9 G. 4, c. 31, s. 7, and the offence was not committed "on land," within the meaning of that Act, for the death, by which the offence was completed, was on board of a ship in harbour (*f*).

Also for misdemeanors, committed abroad by persons holding public offices or employments under the British government, the offenders may in like manner be tried, &c., in this country (*g*).

Offences partly in England, partly out of it.] Where any person being feloniously stricken, poisoned or otherwise hurt upon the sea, or at any place out of England, shall die of such stroke, poisoning or hurt in England,—or being feloniously stricken, poisoned or otherwise hurt at any place in England, shall die of such stroke, poisoning or hurt upon the sea or at any place out of England:—every offence committed in respect of any such case, whether as principal, or as accessory before or after the fact, may be tried, &c., in the county or place in England where the death, stroke, poisoning or hurt shall happen (*h*).

Offences in counties of towns, &c.] Offences committed within the county of a city or town corporate, may, if necessary, be tried at the assizes for the next adjoining county (*i*).

Accessories.] An accessory before the fact to felony, whether tried with or without the principal, may be tried, &c., by any court which shall have jurisdiction to try the principal felony, although the offence of accessory may have been committed on the high seas, or at any place on land within or without the British dominions; or if the offence of the principal be committed in one county, and that of the accessory in another, the accessory may be tried in either (*k*). And the same, as to accessories after the fact (*l*).

(*f*) *R.* v. *Matts*, 7 Car. & P. 458.

(*g*) 42 G. 3, c. 85. See *R.* v. *Shawe*, 5 M. & S. 403.

(*h*) 9 G. 4, c. 31, s. 8.

(*i*) 38 G. 3, c. 52, s. 2.

(*k*) 7 G. 4, c. 64, s. 9.

(*l*) Id. s. 10.

Receivers of stolen goods.] Receivers of goods feloniously stolen, taken, obtained or converted (*m*), may be tried, &c., in the county or place in which he shall have had such property, or in any county or place in which the principal may be tried (*n*).

Bigamy.] A person charged with bigamy may be tried, &c., in the county in which he shall be apprehended or be in custody (*o*), or in the county or place where the second marriage took place.

Forgery.] For forgery, and all other offences against the statute relating thereto (*p*), the offender may be tried, &c., in any county in which he shall be apprehended or be in custody (*q*); and every accessory, in the county or place where the principal may be tried (*r*). Or they may be tried, &c., in the county or place where their offence was committed.

Larceny.] In larceny, like other offences, the offender may be tried in the county or place where he stole the goods; or if, after stealing them, he carry them into or through other counties, he may be tried as for a simple larceny in any county into or through which he carried them (*s*). But in this latter case, the original taking must be a larceny at common law, and not one created by statute (*t*), or committed out of England (*u*).

Stealing from wreck.] In stealing from a ship in distress, wrecked, stranded or cast on shore, the offender may be tried, &c., either in the county, &c., in which the offence was committed, or in any county next adjoining (*x*).

Smuggling.] In offences committed on the high seas against the statute relating to smuggling (*y*), or any other Act relating to the customs, the offence shall, for the purpose of prosecution, be deemed and taken to have been committed at the place on land, into which the offender shall be taken, brought, carried or found (*z*).

(*m*) See *ante*, p. 341.
(*n*) 7 & 8 G. 4, c. 29, s. 56.
(*o*) 9 G. 4, c. 31, s. 22.
(*p*) 11 G. 4 & 1 W. 4, c. 66.
(*q*) See *R.* v. *Smythies*, 19 Law J. 31, m.
(*r*) 11 G. 4 & 1 W. 4, c. 66, s. 24.
(*s*) *Ante*, pp. 237, 238.
(*t*) *R.* v. *Millar*, 7 Car. & P. 665.
(*u*) *R.* v. *Madge*, 9 Car. & P. 29. *R.* v. *Prowes*, Ry. & M. 349.
(*x*) 7 & 8 G. 4, c. 29, s. 18.
(*y*) 3 & 4 W. 4, c. 53.
(*z*) Id. s. 77.

VERDICT.

See "Trial."

WAREHOUSE.

See "Burning," "Larceny."

WIFE.

See "Husband and Wife."

WILL.

See "Forgery," "Larceny."

WITNESS.

See "Evidence."

WOMAN.

See "Abduction," "Abortion," "Concealing Birth," "Rape."

WOOD.

See "Burning," "Larceny," "Malicious Injuries."

WOODWORK.

See "Larceny."

WOUNDING.

See "Attempts to Murder."

WRECK.

The offences relating to wreck, and the law upon the subject generally, have already been fully treated of;—see as to conveying away wreck or impeding the saving of it, *ante*, vol. 2, p. 1156; as to exhibiting false lights or signals to bring a ship into danger,—or doing any thing tending to the loss of a ship in distress,—or destroying any part of a ship in distress, &c., or the goods belonging to it,—or impeding a person in saving his life from it,—*ante*, pp. 297, 298. And as to stealing from a ship in distress or wrecked,—see *ante*, p. 258.

NOTE.

In the column,—*Transportation*,—in the following Table, I have stated the punishment to be transportation wherever the statute creating or punishing the offence directed it. But the reader will find, that by stat. 16 & 17 Vict. c. 99, page 377, no person shall be Transported for a less term than *fourteen* years; but shall be sentenced to be kept in Penal Servitude instead; that is to say:

Instead of Transportation for *seven years*, or for a term not exceeding *seven years*, Penal Servitude for the term of *four years*:

Instead of any term of Transportation exceeding *seven years*, and not exceeding *ten years*, Penal Servitude for any term not less than *four*, and not exceeding *six years*:

Instead of any term of Transportation exceeding *ten years*, and not exceeding *fifteen years*, Penal Servitude for any term not less than *six*, and not exceeding *eight years*:

Instead of any term of Transportation exceeding *fifteen years*, Penal Servitude for any term not less than *six*, and not exceeding *ten years*:

Instead of Transportation for the term of *life*, Penal Servitude for the term of *life*.

Where the period of Transportation is for more than fourteen years, the judge may in his discretion award Penal Servitude instead. 16 & 17 *Vict. c.* 99, *ss.* 1, 2, 3, 4.

A

TABLE

OF

ALL INDICTABLE OFFENCES

TREATED OF IN

THIS VOLUME,

WITH

THEIR PUNISHMENTS, &c.

OFFENCE.	Felony or Misdemeanor.	Statute.
Abduction.		
1. Forcible abduction from motives of lucre, p. 1	Felony	9 G. 4, c. 31, s. 19 ..
2. Abduction of a girl under 16 years, p. 2	Misdemeanor	Id. s. 20 ....
Abortion.		
1. By administering drugs, p. 3..	Felony	1 Vict. c. 85, s. 6 ..
2. By using instruments, p. 3....	Same	Id. ....
Accessory and Principal.		
Principal in second degree, p. 4	Same as principal in first degree	....
Accessory before the fact, in felony, p. 6	Same as principal	11 & 12 Vict. c. 46, s. 1
In treason and misdemeanors all are principals, p. 6		
Accessory after the fact, in felony, p. 7	Felony	....
In treason all are principals; in misdemeanor, accessory after the fact not punishable, pp. 7, 8		
Accusing of Crime.		
1. Letter accusing or threatening to accuse, &c., with intent to extort, p. 9	Felony	10 & 11 Vict. c. 66, s. 1
2. Accusing or threatening to accuse, with intent to extort, p. 10	Felony	Id. s. 2............
3. Accusing or threatening, and thereby extorting, p. 11	Felony	1 Vict. c. 87, s, 4 ..
4. Threatening to publish libel, &c. with intent to extort, p. 11	Misdemeanor	6 & 7 Vict. c. 96, s. 3
Affray, p. 15.	Misdemeanor	C. L.; 2 Ed. 3, c. 3 ..
Agent, Banker, &c.		
1. Embezzlement of money by, p. 16	Misdemeanor	7 & 8 G. 4, c. 29, s. 49

Transportation, &c. *and see page* 405.	Imprisonment, &c.	Where to be tried.	Costs.	Reference to Forms.
				Page
For life, or not less than 7 years	Or imp. h. l. for not more than 4 years	Assizes	Costs	1
....	Fine or imp. or both	Assizes	Costs	3
For life, or not less than 15 years	Or imp. h. l. for not more than 3 years	Assizes	Costs	3
Same	Same	Assizes	Costs	4
Same as principal in first degree	Same as principal in first degree	......	Costs	6
Same as principal ..	Same as principal ..	......	Costs	7
Various	Various	......	Costs	8
For life, or not less than 7 years	Or imp. h. l. for not more than 4 years	Assizes	Costs	10
Same	Same	Assizes	Costs	10
For life, or not less than 15 years	Or imp. h. l. for not more than 3 years	Assizes	Costs	11
....	Imp. h. l. for not more than 3 years	Assizes	....	12
....	Imp. or fine, or both	Sessions	....	15
For not more than 14 years nor less than 7	Or fine, or imp. h. l.	Sessions	....	17

OFFENCE.	Felony or Misdemeanor.	Statute.
Agent, Banker, &c.—*continued.*		
2. Selling, &c., chattels or securities intrusted to him, p. 18	Misdemeanor	7 & 8 G. 4, c. 29, s. 49
3. Factor pledging, &c., the property of his principal, p. 19	Misdemeanor	Id. s. 51 ....
4. The like offence under 5 & 6 Vict. c. 39, s. 6, p. 20	Misdemeanor	5 & 6 Vict. c. 39, s. 6
Arms, Training to the Use of, p. 28.		
1. Training, p. 28	Misdemeanor	60 G. 3 & 1 G. 4, c. 1, s. 1
2. Being trained, p. 29........	Misdemeanor	Id. ....
3. Dispersing such meeting, p. 29		
Assault, p. 32.		
1. Common assault and battery, p. 32	Misdemeanor	C. L. ....
2. Upon justices, &c. in case of wreck, p. 34	Misdemeanor	9 G. 4, c. 31, s. 24..
3. Upon peace or revenue officers, p. 35	Misdemeanor	Id. s. 25 ....
4. To prevent apprehension, p. 35	Misdemeanor	Id. s. 25 ....
5. In pursuance of conspiracy to raise wages, p. 36	Misdemeanor	Id. s. 25 ....
6. With intent to commit a felony, p. 36	Misdemeanor	Id. s. 25 ....
7. Indecent assaults, p. 37......	Misdemeanor	C. L...............
Attempt to Murder, p. 39.		
1. By poison, p. 39	Felony..........	1 Vict. c. 85, s. 2....
2. By stabbing, cutting or wounding, p. 40	Felony..........	Id. ....
3. By attempting to shoot, p. 41.	Felony..........	Id. s. 3............
4. By attempting to drown, suffocate, &c., p. 42	Felony..........	Id. s. 3............

Transportation, &c. *and see page* 405.	Imprisonment, &c.	Where to be tried.	Costs.	Reference to Forms.
				Page
For not more than 14 years nor less than 7	Or fine, or imp. h. l.	Sessions	....	18
Same	Same	Sessions	....	19
Same	Same	Sessions	....	21
Not more than 7 years	Or imp. not more than 2 years	Sessions	....	28
....	Fine, and imp. not more than 2 years	Sessions	....	29
....	Fine or imp. or both	Sessions	Costs, if JJ. bind over to the sessions	34
Seven years	Or imp. h. l.	Sessions	....	34
....	Or imp. h. l. not more than 2 years, and fine	Sessions	Costs	35
....	Same	Sessions	....	36
....	Same	Sessions	Costs	36
....	Same	Sessions	Costs	36
....	Fine or imp. or both	Sessions	....	38
Death	....	Assizes	Costs	39
Death	....	Assizes	Costs	41
For life, or not less than 15 years	Or imp. h. l. not more than 3 years	Assizes	Costs	41, 42
Same	Same	Assizes	Costs	42

OFFENCE.	Felony or Misdemeanor.	Statute.
Attempt to do Bodily Injury, p. 42.		
1. By shooting or attempting to shoot, or by cutting or wounding, &c., p. 42	Felony..........	1 Vict. c. 85, s. 4 ..
2. Doing bodily injury with or without weapon, or cutting or wounding, p. 44	Misdemeanor	14 & 15 Vict. c. 19, s. 4
3. By explosive substances or corrosive liquids, p. 45	Felony..........	9 & 10 Vict. c. 25, ss. 3, 4
Attempts to Commit other Offences, p. 47.	Misdemeanor	C. L. ....
Bankrupt, Frauds by, p. 48.		
1. Not surrendering, p. 48	Felony..........	12 & 13 Vict. c. 106, s. 251
2. Not discovering his estate, &c., p. 49	Felony..........	Id. ....
3. Not delivering up his goods, books, &c., p. 49	Felony..........	Id. ....
4. Concealing or embezzling to the value of £10, p. 50	Felony..........	Id. ....
Barratry, p. 50	Misdemeanor	C. L. ....
Bigamy, p. 51	Felony..........	9 G. 4, c. 31, s. 22..
Blasphemy and Profaneness, p. 52.		
Blasphemy, p. 52	Misdemeanor	C. L. ....
Scoffing at scripture, p. 52	Misdemeanor	C. L..............
Blasphemous libel, p. 52	Misdemeanor	C. L..............
Bribery, p. 5.		
Bribery at common law, p. 53 ..	Misdemeanor	C. L..............
Bribery at elections, p. 53	Misdemeanor	17 & 18 Vict. c. 102, s. 2
Being bribed, p. 53	Misdemeanor	Id. s. 3............
Using intimidation, &c., p. 53..	Misdemeanor	Id. s. 5............

Transportation, &c. *and see page* 405.	Imprisonment, &c.	Where to be tried.	Costs.	Reference to Forms.
				Page
For life, or not less than 15 years	Or imp. h. l. for not more than 3 years	Assizes	Costs	44
....	Same	Sessions	Costs	44
Same	Same	Assizes	Costs	46
....	Fine or imp. or both	Sessions	Costs, if attempt to commit a felony	47
For life, or not less than 7 years	Or imp. h. l. for not more than 7 years	Assizes	Costs	48
Same	Same	Assizes	Costs	49
Same	Same	Assizes	Costs	49
Same	Same	Assizes	Costs	50
....	Fine, imprisonment or both	Sessions		
For 7 years	Or imp. h. l. for not more than 2 years	Assizes	Costs	52
....	Fine, imprisonment or both	Assizes		
....	Same	Assizes		
....	Same	Assizes	....	52
....	Same	Assizes		
....	Fine and imprisonment	Assizes	Costs	
....	Same	Assizes	Costs	
....	Same	Assizes	Costs	

OFFENCE.	Felony or Misdemeanor.	Statute.
Bridges, p. 54.		
Not repairing them, p. 54	Misdemeanor	22 H. 8, c. 5
Destroying or damaging them, p. 56	Felony	7 & 8 G. 4, c. 30, s. 13
Burglary and Housebreaking, p. 56.		
1. Burglary, pp. 56, 58	Felony	1 Vict. c. 86, s. 3 ..
2. Burglary and attempt to murder, p. 57	Felony	Id. s. 2 ....
3. Burglary by breaking out of a house, p. 57	Felony	7 & 8 G. 4, c. 29, s. 11; 1 Vict. c. 86, s. 3
4. Breaking and entering a church or chapel, p. 60	Felony	7 & 8 G. 4, c. 29, s. 10
5. Housebreaking and stealing, p. 60	Felony	7 & 8 G. 4, c. 29, s. 12; 1 Vict. c. 90, s. 1
6. Breaking and entering a building within the curtilage, p. 61	Felony	7 & 8 G. 4, c. 29, s. 14; 1 Vict. c. 90, s. 2
7. Breaking and entering a shop, warehouse, &c. and stealing, p. 62	Felony	7 & 8 G. 4, c. 29, s. 15; 1 Vict. c. 90, s. 2
8. Being armed, &c., with intent to break and enter, p. 62	Misdemeanor	14 & 15 Vict. c. 19, s. 1
Burning, p. 64.		
1. Church or chapel, p. 64	Felony	1 Vict. c. 89, s. 3 ..
2. Dwelling-house, any person being therein, p. 64	Felony	Id. s. 2 ....
3. House, outhouse, manufactory, &c., p. 65	Felony	Id. s. 3 ....
4. Farm buildings, p. 65	Felony	7 & 8 Vict. c. 62, s. 1
5. Hay, straw, implements, &c. in farm buildings, p. 66	Felony	Id. s. 3 ....
6. Stacks of corn, hay, wood, &c., p. 66	Felony	1 Vict. c. 89, s. 10..
7. Crops of corn or pulse, trees, furze, &c., p. 67	Felony	7 & 8 G. 4, c. 30, s. 17
8. Coal mines, p. 67.	Felony	1 Vict. c. 89, s. 9 ..
9. Ships, whereby life endangered, &c., p. 67	Felony	Id. s. 4 ....
10. Ships, to prejudice owner or underwriters, p. 68	Felony	Id. s. 6 ....

Transportation, &c. *and see page* 405.	Imprisonment, &c.	Where to be tried.	Costs.	Reference to Forms.
				Page
For life, or not less than 7 years	Or imp. h. l. for not more than 4 years	Assizes	Costs	56
For life, or not less than 10 years	Or imp. h. l. for not more than 3 years	Assizes	Costs	56
Death	....	Assizes	Costs	57
For life, or not less than 10 years	Or imp. h. l. for not more than 3 years	Assizes	Costs	57
For life, or not less than 7 years	Same	Assizes	Costs	60
For not more than 15 years nor less than 10	Same	Sessions	Costs	61
Same	Same	Sessions	Costs	61
Same	Same	Sessions	Costs	62
....	Same	Sessions	....	63
For life, or not less than 15 years	Same	Assizes	Costs	64
Death	....	Assizes	Costs	64
For life, or not less than 15 years	Same	Assizes	Costs	65
Same	Same	Assizes	Costs	66
Same	Same	Assizes	Costs	66
Same	Same	Assizes	Costs	67
For 7 years	Or imp. h. l. for not more than 2 years	Assizes	Costs	67
For life, or not less than 15 years	Or imp. h. l. for not more than 3 years	Assizes	Costs	67
Death	....	Assizes	Costs	68
For life, or not less than 15 years	Or imp. h. l. for not more than 3 years	Assizes	Costs	68

OFFENCE.	Felony or Misdemeanor.	Statute.
Buying of Titles	Misdemeanor	C.L. and 32 H. 8, c. 9
Carnally Knowing Female Children, p. 69		
1. Under ten, p. 69	Felony	9 G. 4, c. 31, s. 17; 4 & 5 Vict. c. 56, s. 3
2. Above 10 and under 12, p. 70	Misdemeanor	9 G. 4, c. 31, s. 17..
Cattle, p. 71		
1. Stealing, or killing with intent to steal, p. 71	Felony	7 & 8 G. 4, c. 29, s. 25; 1 Vict. c. 90, s. 1
2. Maliciously killing or wounding, p. 72	Felony	7 & 8 G. 4, c. 30, s. 16; 1 Vict. c. 90, s. 2
Challenge to Fight, p. 72 ..	Misdemeanor	C. L. ....
Provoking a person to send a challenge, p. 72	Misdemeanor	C. L. ....
Child Stealing, p. 73	Felony	9 G. 4, c. 31, s. 21..
Clergymen, Arresting, p. 74	Misdemeanor	Id. s. 23 ....
Coin, p. 75		
1. Counterfeiting gold or silver coin, p. 75	Felony	2 W. 4, c. 34, s. 3 ..
2. Gilding or silvering coin, p. 76	Felony	Id. s. 4 ....
3. Impairing the coin, p. 76 ..	Felony	Id. s. 5 ....
4. Buying, selling or importing counterfeit coin, p. 77	Felony	Id. s. 6 ....
5. Uttering counterfeit coin, p. 77	Misdemeanor	Id. s. 7 ....
6. Uttering, and having other base coin in possession, p. 78	Misdemeanor	Id. s. 7 ....

Transportation, &c. *and see page* 405.	Imprisonment, &c.	Where to be tried.	Costs.	Reference to Forms.
				Page
....	Fine or imprisonment or both, and forfeiture	Sessions		
For life	....	Assizes	Costs	69
....	Imp. h. l.	Sessions	Costs	70
For not more than 15 years nor less than 10	Or imp. h. l. for not more than 3 years	Sessions	Costs	71
For not more than 15 years nor less than 7	Same	Sessions	Costs	72
....	Fine or imp. or both	Sessions	....	73
....	Same	Sessions	....	73
For 7 years	Or imp. h. l. for not more than 2 years	Sessions	Costs	74
....	Fine or imp. or both	Sessions		
For life, or not less than 7 years	Or imp. h. l. for not more than 4 years	Assizes	Costs	75
Same	Same	Assizes	Costs	76
For not more than 14 years nor less than 7	Or imp. h. l. for not more than 3 years	Sessions	Costs	77
For life, or not less than 7 years	Or imp. h. l. for not more than 4 years	Assizes	Costs	77
....	Imp. h. l. for not more than 1 year	Sessions	....	78
....	Imp. h. l. for not more than 2 years	Sessions	....	78

OFFENCE.	Felony or Misdemeanor.	Statute.
Coin—*continued.*		
7. Uttering twice within ten days, p. 78	Misdemeanor	2 W. 4, c. 34, s. 7 ..
8. Uttering after a former conviction, p. 79	Felony..........	Id. s. 7............
9. Having such coin, with intent to utter it, p. 79	Misdemeanor	Id. s. 8............
Same, 2nd offence, p. 79......	Felony..........	Id. s. 8............
10. Counterfeiting, &c., copper coins, &c., p. 80	Felony..........	Id. s. 12 ....
11. Uttering base copper coin, p. 80	Misdemeanor	Id. s. 12 ....
12. Making or having, &c., coining tools, &c., p. 81	Felony..........	Id. s. 10 ....
13. Conveying tools, &c., out of the Mint, p. 81	Felony..........	Id. s. 11 ....
14. Accessories, &c., p. 83		
Compounding Felony, &c., p. 83	Misdemeanor	C. L. ....
Compounding penal actions, p. 83	Misdemeanor	56 G. 3, c. 138, s. 2
Taking reward for helping to stolen goods, p. 83	Felony..........	7 & 8 G. 4, c. 29, s. 58
Concealing Birth, p. 84 ..	Misdemeanor	9 G. 4, c. 31, s. 14..
Conspiracy, p. 86..........	Misdemeanor	C.L...............
Cruelty to Apprentices, Servants, &c., p. 95.	Misdemeanor	14 Vict. c. 11, ss. 7, 6
Dead Body, Disinterring or Selling, p. 96.	Misdemeanor	C. L..............
Disorderly House, keeping, p. 101.	Misdemeanor	C. L.; 3 G. 4, c. 114
Dissenters, p. 104.		
Disturbing their congregations, p. 104	Misdemeanor	52 G. 3, c. 155, s. 12

Transportation, &c. *and see page* 405.	Imprisonment, &c.	Where to be tried.	Costs.	Reference to Forms.
				Page
....	Imp. h. l. for not more than 2 years	Sessions	....	79
For life, or not less than 7 years	Or imp. h. l. for not more than 4 years	Assizes	Costs	79
....	Imp. h. l. for not more than 3 years	Sessions	....	80
For life, or not less than 7 years	Or imp. h. l. for not more than 4 years	Assizes	Costs	
For not more than 7 years	Or imp. h. l. for not more than 2 years	Sessions	Costs	
....	Imp. h. l. for not more than 1 year	Sessions		
For life, or not less than 7 years	Or imp. h. l. for not more than 4 years	Assizes	Costs	
Same	Same	Assizes	Costs	
....	Fine or imp. or both	Sessions		
....	Same	Sessions		
For life, or not less than 7 years	Or imp. h. l. for not more than 4 years	Assizes	Costs	84
....	Imp. h. l. for not more than 2 years	Assizes	Costs	85
....	Fine or imp. (h. l. in some cases, 14 & 15 Vict. c. 100, s. 29), or both	Sessions	Costs in some cases, 14 & 15 Vict. c. 55, s. 2	88
....	Imp. h. l. for not more than 3 years	Sessions	....	95, 96
....	Fine or imp. or both	Sessions	....	96
....	Fine or imp. (h. l.), or both	Sessions	Costs paid by overseers	104
....	Fine £40..........	Sessions	....	104

OFFENCE.	Felony or Misdemeanor.	Statute.
Dog Stealing, Second Offence, p. 105	Misdemeanor	8 & 9 Vict. c. 47, s. 2
Receiving money to restore stolen dogs, p. 105	Misdemeanor	Id. s. 6..........
Embezzlement, p. 106		
By clerks or servants, p. 106....	Felony..........	7 & 8 G. 4, c. 29, s. 47
By officers in Her Majesty's service, p. 111	Felony..........	2 W. 4, c. 4, s. 1....
Embracery, p. 112	Misdemeanor	C. L.; 6 G. 4, c. 50, s. 61
Escape, p. 116		
1. Party escaping, p. 116	Misdemeanor	C. L. ....
2. Aiding prisoner to escape, p. 116	Misdemeanor .... Or felony, if party in custody for treason or felony	C. L. .... 16 G. 2, c. 31, s. 3..
3. Officers allowing escape:		
—— negligent, p. 117......	Misdemeanor	C. L. ....
—— voluntary, p. 117......	Misdemeanor	C. L. ....
4. Aiding the escape of prisoners of war, p. 118	Felony	52 G. 3, c. 156, s. 1
Extortion, p. 151	Misdemeanor	C. L. ....
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Forcible Entry and Detainer, p. 155	Misdemeanor	5 Ric. 2, c. 7; 21 J. 1, c. 15
Foreign Service, p. 158		
1. Engaging in it without licence, p. 158	Misdemeanor	59 G. 3, c. 69, s. 2..
2. The like in the naval service, p. 159	Misdemeanor	Id. ....

Transportation, &c. *and see page* 405.	Imprisonment, &c.	Where to be tried.	Costs.	Reference to Forms.
....	Fine, or imp. h. l., or both	Sessions	....	Page 105
....	Fine or imp. or both	Sessions		
For not more than 14 years, nor less than 7	Or imp. h. l. for not more than 3 years	Sessions	Costs	111
Same	Same	Sessions	Costs	
....	Fine or imp. or both	Sessions		
....	Same	Sessions		
....	Same	Sessions		
For 7 years	....	Sessions	Costs	117
....	Same	Sessions	....	117
....	Same .... (How, if party be re-taken and convicted, p. 117)	Sessions	....	117
For life, or not less than 7 years	....	Assizes	Costs	
....	Fine or imp. or both	Sessions	....	151
....	Same	Sessions	....	152
For 7 years	Or same	Sessions	Cost	154
....	Same	Sessions	....	156, 157
....	Same	Sessions	....	159
....	Same	Sessions		

OFFENCE.	Felony or Misdemeanor.	Statute.
Foreign Service—*continued.*		
3. Going abroad for the purpose of enlisting, p. 159	Misdemeanor	59 G. 3, c. 69, s. 2 ..
4. Engaging, &c., others in such service, p. 159	Misdemeanor	Id. ....
5. Fitting out vessels of war for foreign states, p. 160	Misdemeanor	Id. ss. 7, 8 ....
Forgery, p. 161.		
1. Seals or sign manual, p. 161	Treason	1 W. 4, c. 66, s. 2; 1 Vict. c. 84, s. 1
2. Bills, cheques, bank notes, wills, exchequer bills, East India bonds, p. 161	Felony..........	1 W. 4, c. 66, s. 3; 1 Vict. c. 84, ss. 1, 2
3. Paper for forged exchequer bills, making or having, p. 166	Felony..........	5 & 6 Vict. c. 66, s. 9
4. Deeds, bonds, receipts, orders for goods, &c., p. 167	Felony..........	1 W. 4, c. 66, s. 10..
5. Foreign instruments, p. 168..	Felony..........	Id. s. 30 ....
6. Forging bank notes, p. 169..	Felony..........	1 W. 4, c. 66, s. 3; 1 Vict. c. 84, ss. 1, 2
7. Buying or having forged bank notes, p. 170	Felony..........	1 W. 4, c. 66, s. 12..
8. Making paper for forged blank notes, or moulds, p. 170	Felony..........	Id. s. 13 ....
9. Making, having, or using plates for bank notes, or the blank notes, p. 171	Felony..........	Id. ss. 15, 16 ......
10. Making other bankers' paper or moulds, p. 172	Felony..........	Id. s. 17 ....
11. Making, using, &c., plates for other bankers' notes, p. 173	Felony..........	Id. s. 18 ....
12. Making, using, &c., plates for notes of foreign banks, &c., p. 173	Felony..........	Id. s. 19 ....
13. Forging transfers of stock, or powers of attorney, &c., p. 175	Felony..........	1 W. 4, c. 66, s. 6; 1 Vict. c. 84, s. 1

Transportation, &c. *and see page* 405.	Imprisonment, &c.	Where to be tried.	Costs.	Reference to Forms.
				Page
....	Fine or imp. or both	Sessions		
....	Same	Sessions		
....	Same	Sessions		
For life, or not less than 7 years	Or imp. h. l. for not more than 4 years, nor less than 2	Assizes	Costs	161
Same	Same	Assizes	Costs	165, 166
Same	Same	Assizes	Costs	
Same as if the instrument were English	....	Assizes	Costs	
For life, or not less than 7 years	Same	Assizes	Costs	
For 14 years	....	Assizes	Costs	
Same	....	Assizes	Costs	
Same	....	Assizes	Costs	
For not more than 14 years, nor less than 7	Or imp. h. l. for not more than 3 years, nor less than 1	Assizes	Costs	
Same	Same	Assizes	Costs	
Same	Same	Assizes	Costs	
For life, or not less than 7 years	Or imp. h. l. for not more than 4 years, nor less than 2	Assizes	Costs	

OFFENCE.	Felony or Misdemeanor.	Statute.
Forgery—*continued.*		
14. Forging the attestation of such power of attorney, p. 175	Felony..........	1 W. 4, c. 66, s. 8..
15. Personating the owner of stock, p. 176	Felony..........	1 W. 4, c. 66, s. 6; 1 Vict. c. 84, s. 1
16. Making false entries in the books as to the public funds, p. 176	Felony..........	1 W. 4, c. 66, s. 5; 1 Vict. c. 84, s. 1
17. Acknowledging recognizances, &c., in another's name, p. 177	Felony..........	1 W. 4, c. 66, s. 11..
18. False entries in registers of baptism, &c., p. 177	Felony..........	Id. s. 20 ....
19. Destroying or injuring such register, p. 178	Felony..........	6 & 7 W. 4, c. 86, s. 43
20. Making false entries in copies sent to registrar, p. 179	Felony..........	1 W. 4, c. 66, s. 22..
Game, p. 181		
1. Killing hares or conies in warrens, &c., in the night, p. 181	Misdemeanor	7 & 8 G. 4, c. 29, s. 30
2. Taking, &c., game in the night, third offence, p. 182	Misdemeanor	9 G. 4, c. 69, s. 1; 7 & 8 Vict. c. 29, s. 2
3. Three or more, armed, taking game in the night, p. 183	Misdemeanor	9 G. 4, c. 69, s. 9 ..
4. Offenders using violence to those who apprehend them, p. 185	Misdemeanor	Id. s. 2 ....
Gaming, p. 186		
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Gaming-house, keeping, p. 186	Misdemeanor	C. L. ....
Homicide, p. 188—200		
Murder, p. 188	Felony..........	9 G. 4, c. 31, s. 3 ..

Transportation, &c. *and see page* 405.	Imprisonment, &c.	Where to be tried.	Costs.	Reference to Forms.
				Page
For 7 years........	Or imp. h. l. for not more than 2 years, nor less than 1	Assizes	Costs	
For life, or not less than 7 years	Or imp. h. l. for not more than 4 years, nor less than 2	Assizes	Costs	
Same	Same	Assizes	Costs	
Same	Same	Assizes	Costs	
Same	Same	Assizes	Costs	
For 7 years........	Or imp. h. l. for not more than 2 years	Sessions	Costs	
For 7 years........	Or imp. h. l. for not more than 2 years, nor less than 1	Assizes	Costs	
....	Fine or imprisonment or both	Sessions	....	181
For 7 years........	Or imp. h. l. for not more than 2 years	Sessions	....	182
For not more than 14 nor less than 7 years	Or imp. h. l. for not more than 3 years	Assizes	....	184
For 7 years........	Or imp. h. l. for not more than 2 years	Sessions	....	185
Same	Or fine, or imp. or both	Sessions		
....	Fine, or imp. h. l., or both	Sessions	....	186
Death	....	Assizes	Costs	200

OFFENCE.	Felony or Misdemeanor.	Statute.
Homicide—*continued.*		
Manslaughter, p. 188	Felony..........	9 G. 4, c. 31, s. 9 ..
Horse Slaughtering, p. 201		
Putting the hide into lime, p. 201	Misdemeanor	26 G. 3, c. 71, s. 9..
Indecency, p. 204.		
Public indecency, p. 204	Misdemeanor	C. L. ....
Printing or publishing indecent books, prints, &c., p. 204	Misdemeanor	C. L. ....
Justice's Order, Disobeying, p. 219	Misdemeanor	C. L. ....
Larceny, p. 220—260		
1. Larceny of Goods and Chattels, p. 220	Felony..........	7 & 8 G. 4, c. 29, s. 4
2. Of Valuable Securities, p. 239	Felony..........	Id. s. 5 ....
Deeds, &c., relating to real property, p. 241	Misdemeanor	7 & 8 G. 4, c. 29, s. 23
Wills or codicils, p. 241........	Misdemeanor	Id. s. 22 ....
Records and other documents, p. 242	Misdemeanor	Id. s. 21 ....
3. Larceny of Animals, p. 243.		
Horses, cows, sheep, &c., p. 243	Felony..........	7 & 8 G. 4, c. 29, s. 25; 1 Vict. c. 90, ss. 1, 3
Killing with intent to steal them, p. 243	Felony..........	Same ....
Hunting, killing or wounding deer in inclosed grounds, p. 244	Felony..........	7 & 8 G. 4, c. 29, s. 26
The like in uninclosed grounds, 2nd offence, p. 244	Felony..........	Id. ....
Beating or wounding deer keepers, p. 245	Felony..........	Id. s. 29 ....

Transportation, &c. *and see page* 405.	Imprisonment, &c.	Where to be tried.	Costs.	Reference to Forms.
				Page
For life, or not less than 7 years	Or imp. h. l. for not more than 4 years, or fine	Assizes	Costs	200
....	fine and imp.	Sessions		
....	Fine or imp. or both	Sessions		
....	Same	Sessions		
....	Same	Sessions	....	219
For 7 years........	Or imp. h. l. for not more than 2 years	Sessions	Costs	235
Same	Same	Sessions	Costs	241
7 years	Or fine or imp. or both	Assizes	....	241
Same	Same	Same..	....	242
Same	Same	Same..	....	242
For not more than 15 or less than 10 years	Or imp. h. l. for not more than 3 years	Sessions	Costs	243
Same	Same	Same.	Costs	243
7 years............	Or imp. h. l. for not more than 2 years	Same..	Costs	244
Same	Same	Same..	Costs	244
Same	Same	Same..	Costs	245

OFFENCE.	Felony or Misdemeanor.	Statute.
3. Larceny of Animals—*continued.*		
Taking or killing hares or conies in the night, p. 245	Misdemeanor	7 & 8 G. 4, c. 29, s. 30
Pigeons, p. 246	Felony..........	C. L. ....
Fish, in water adjoining a dwelling-house, p. 246	Misdemeanor	7 & 8 G. 4, c. 29, s. 34
Oysters, stealing or dredging for, p. 247	Misdemeanor	Id. s. 36 ....
4. Larceny of Things Growing on or attached to Land, p. 248		
Trees, &c., in pleasure grounds, p. 248	Felony..........	Id. s. 38 ....
Trees, &c., elsewhere, of value of £5, p. 248	Felony..........	Id. s. 38 ....
Trees, &c., of value of 1*s*., third offence, p. 249	Felony..........	Id. s. 39 ....
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5. Larceny from Mines, p. 252	Felony..........	Id. s. 37 ....
6. Larceny from the Person, p. 252		
Robbery, p. 252..............	Felony..........	1 Vict. c. 87, s. 5....
Robbery by two or more, p. 253	Felony..........	Id. s. 3............
Robbery by person armed, p. 253	Felony..........	Id. s. 3............
Robbery and beating, &c., p. 253	Felony..........	Id. s. 3............
Robbery and wounding, p. 253..	Felony..........	Id. s. 2 ....
Assault with intent to rob, p. 253	Felony..........	Id. s. 6............
The like by person armed, or by two or more, p. 254	Felony..........	Id. s. 3............
Stealing from the person, p. 254	Felony..........	Id. s. 5............

Transportation, &c. *and see page* 405.	Imprisonment, &c.	Where to be tried.	Costs.	Reference to Forms.
				Page
....	Fine or imp. or both	Same		
7 years	Or imp. h. l. for not more than 2 years	Same..	Costs	246
....	Fine or imp. or both	Same..	....	246
....	Same	Same..	....	247, 248
7 years	Or imp. h. l. for not more than 2 years	Same..	Costs	248, 249
Same	Same	Same..	Costs	249
Same	Same	Same..	Costs	250
Same	Same	Same..	Costs	250
Same	Same	Same..	Costs	251, 252
Same	Same	Same	Costs	252
For not more than 15 years	Or imp. h. l. for not more than 3 years	Same	Costs	253
For life, or not less than 15 years	Same	Assizes	Costs	
Same	Same	Same	Costs	
Same	Same	Same	Costs	
Death	....	Same	Costs	
....	Imp. h. l. for not more than 3 years	Sessions	Costs	254
For life, or not less than 15 years	Or imp. h. l. for not more than 3 years	Assizes	Costs	
For not more than 15 years nor less than 10	Or same	Sessions	Costs	254

OFFENCE.	Felony or Misdemeanor.	Statute.
6. Larceny from the Person —*continued.*		
Demanding money with menaces, p. 254	Felony..........	1 Vict. c. 87, s. 7....
Using chloroform, for the purpose of committing a felony, p. 255	Felony..........	14 & 15 Vict. c. 19, s. 3
7. Larceny from the House, p. 256		
Stealing in a dwelling-house to the value of £5, p. 256	Felony..........	7 & 8 G. 4, c. 29, s. 12; 1 Vict. c. 90, ss. 1, 3
Stealing in a dwelling-house, a person therein being put in fear, p. 256	Felony..........	7 & 8 G. 4, c. 29, s. 13; 1 Vict. c. 90, s. 5
8. Larceny from Manufactories, p. 257		
Stealing goods in process of manufacture, p. 257	Felony	7 & 8 G. 4, c. 29, s. 16
9. Larceny from Ships, Wharfs, &c., p. 257		
From ships, docks, wharfs, &c., p. 257	Felony	7 & 8 G. 4, c. 29, s. 17; 1 Vict. c. 90, ss. 2, 3
From a ship in distress or wrecked, p. 258	Felony	7 & 8 G. 4, c. 29, s. 18
10. Larceny by Clerks or Tenants, p. 259		
By clerks or servants, p. 259 ..	Felony	Id. ss. 46, 4 ......
By tenants or lodgers, p. 259 ..	Felony	Id. s. 45 ....
Letter, Threatening, p. 260		
Letter threatening to murder, or to burn or destroy property, p. 260	Felony	10 & 11 Vict. c. 66, s. 1

Transportation, &c. *and see page* 405	Imprisonment, &c.	Where to be tried.	Costs.	Reference to Forms.
				Page
....	Imp. h. l. for not more than 3 years	Ses. ions	Costs	255
For life, or not less than 7 years	Or same	Assizes	Costs	255
For not more than 15 years, nor less than 10	Or same	Sessions	Costs	256
Same	Same	Sessions	Costs	257
Samo	Same	Samo..	Costs	257
Same	Same	Same..	Costs	258
Death	....	Assizes	Costs	259
For not more than 14 or less than 7 years	Or same	Sessions	Costs	259
For 7 years........	Or imp. h. l. for not more than 2 years	Sessions	Costs	
For life or not less than 7 years	Or imp. h. l. for not more than 4 years	Assizes	Costs	261

OFFENCE.	Felony or Misdemeanor.	Statute.
Letter, Threatening — *continued.*		
Letter threatening to accuse of crime, p. 261	Felony	10 & 11 Vict. c. 66, s. 1
Letter demanding money, with menaces, &c., p. 262	Felony	7 & 8 G. 4, c. 29, s. 8
Libel, p. 263		
Seditious libel, p. 264	Misdemeanor	C. L..............
Blasphemous libel, p. 265......	Misdemeanor	C. L..............
Libel reflecting on the public administration of justice, p. 266	Misdemeanor	C. L..............
Defamatory libel, p. 266......	Misdemeanor	C. L.; 6 & 7 Vict. c. 96
Lunatic, p. 269		
Medical man signing false certificate of lunacy, p. 270	Misdemeanor	16 & 17 Vict. c. 97, s. 122
Officers in public asylums ill-treating lunatics, p. 271	Misdemeanor	Id. s. 123..........
The like, in private asylums, p. 271	Misdemeanor	8 & 9 Vict. c. 100, s. 56; 16 & 17 Vict. c. 96, s. 9
Maintenance, p. 272	Misdemeanor	C. L..............
Malicious Injuries, p. 272		
1. Malicious Injuries to Houses, &c., p. 273		
Setting fire to a church or chapel, p. 273	Felony	1 Vict. c. 89, s. 3 ..
Setting fire to a dwelling-house, any person being therein, p. 273	Felony	Id. s. 2............
Setting fire to a house, outhouse, manufactory, &c., p. 274	Felony	Id. s. 3............
Setting fire to a hovel, shed, fold, &c., p. 274	Felony	7 & 8 Vict. c. 62, s. 1
Setting fire to hay, straw, &c., in a farm building, p. 275	Felony	Id. s. 2............
Attempting to set fire to buildings, &c., p. 276	Felony	9 & 10 Vict. c. 25, s. 7

Transportation, &c. *and see page* 405.	Imprisonment, &c.	Where to be tried.	Costs.	Reference to Forms.
				Page
For life, or not less than 7 years	Or imp. h. l. for not more than 4 years	Assizes	Costs	262
Same	Same	Same..	Costs	263
....	Fine or imp. or both	Assizes	....	265
....	Same	Same..	....	265
....	Same	Same..	....	266
....	Same	Same..	....	268
....	Same	Sessions	....	271
....	Same	Same..	....	271
....	Same	Same		
....	Same	Same		
For life, or not less than 15 years	Or imp. h. l. for not more than 3 years	Assizes	Costs	273
Death	....	Same..	Costs	274
For life, or not less than 15 years	Same	Same..	Costs	274
Same	Same	Same..	Costs	275
Same	Same	Same..	Costs	275
For not more than 15 years	Or imp. h. l. for not more than 2 years	Sessions	Costs	276

OFFENCE.	Felony or Misdemeanor.	Statute.
1. Malicious Injuries to Houses, &c.—*continued.*		
Riotously demolishing a church, house, &c., p. 276	Felony	7 & 8 G. 4, c. 30, s. 8; 6 & 7 Vict. c. 10
Destroying or damaging a house with gunpowder, any person being therein, p. 278	Felony	9 & 10 Vict. c. 25, ss. 1, 5
Destroying or damaging any building with gunpowder, with intent to murder, p. 278	Felony	Id. ss. 2, 5 ....
Attempting to destroy buildings, &c., with gunpowder, p. 279	Felony	Id. s. 6 ....
Making or having gunpowder, with intent to commit any of the said offences, p. 279	Misdemeanor	Id. s. 8 ....
2. Malicious Injuries to Manufactures, Machinery, &c., p. 279		
Destroying goods in process of manufacture, machinery, &c., p. 279	Felony	7 & 8 G. 4, c. 30, s. 3
Destroying machines in other manufactures, thrashing machines, &c., p. 281	Felony	Id. s. 4 ....
3. Malicious Injuries to Individuals, p. 282.		
Burning, disfiguring or disabling a person with gunpowder, &c., p. 282	Felony	9 & 10 Vict. c. 25, s. 1
Exploding or sending explosive substances, or throwing corrosive fluids, with intent, &c., p. 282	Felony	Id. ss. 4, 5 ....
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Setting fire to stacks of corn, &c., p. 284	Felony	1 Vict. c. 89, s. 10..

Transportation, &c. *and see page* 405.	Imprisonment, &c.	Where to be tried.	Costs.	Reference to Forms.
				Page
For life, or not less than 7 years	Or imp. h. l. for not more than 3 years	Assizes	Costs	277
For life, or not less than 15 years	Same	Same..	Costs	278
Same	Same	Same..	Costs	278
For not more than 15 years	Or imp. h. l. for not more than 2 years	Sessions	Costs	279
....	Imp. h. l. for not more than 2 years	Sessions	....	279
For life, or not less than 7 years	Or imp. h. l. for not more than 4 years	Assizes	Costs	280, 281
For 7 years........	Or imp. h. l. for not more than 2 years	Sessions	Costs	281
For life, or not less than 15 years	Or imp. h. l. for not more than 3 years	Assizes	Costs	282
Same	Same	Same..	Costs	282, 283
For 7 years........	Or imp. h. l. for not more than 2 years	Same..	Costs	284
For life, or not less than 15 years	Or imp. h. l. for not more than 3 years	Same..	Costs	284

OFFENCE.	Felony or Misdemeanor.	Statute.
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Same	Same	Same..	Costs	286
Same	Same	Same..	Costs	286
For life, or not less than 15 years	Or imp. h. l. for not more than 3 years	Assizes	Costs	287
For 7 years	Or imp. h. l. for not more than 2 years	Sessions	Costs	287, 288
Same	Same	Sessions	Costs	288
For life, or not less than 7 years	Or imp. h. l. for not more than 4 years	Assizes	Costs	289, 290
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For life, or not less than 7 years	Or imp. h. l. for not more than 4 years	Assizes	Costs	292
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For 7 years........	Or imp. h. l. for not more than 2 years	Sessions	Costs	297
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For life, or not less than 15 years	Or imp. h. l. for not more than 3 years	Same..	Costs	299
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For life, or not less than 15 years	Or imp. h. l. for not more than 3 years	Assizes	Costs	309
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....	Fine, or imp. or both	Sessions		
....	Fine, or imp. or both	Sessions		
....	Same	Sessions		
....	Same	Sessions		
....	Same	Sessions		
....	Imp. h. l. for not more than 2 years	Sessions		
7 years...........	Or imp. h. l. for not more than 7 years	Assizes	Costs	320
Same	Same	Assizes	Costs	320
Same	Same	Assizes	Costs	320
For life, or not less than 7 years	Same	Assizes	Costs	321
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For life, or not less than 15 years	Or imp. h. l. for not more than 3 years	Same..	Costs	
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For life, or not less than 7 years	Or imp. h. l. for not more than 4 years	Assizes	Costs	
For life	....	Assizes	Costs	
....	Fine or imp. or both	Sessions		
....	Same	Same		
....	Same	Same		
For life, or not less than 7 years	Or imp. h. l. for not more than 4 years	Assizes	Costs	
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For life, or not less than 15 years	Or imp. h. l. for not more than 3 years	Assizes	Costs	
For not more than 14 years	....	Sessions	Costs	
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OFFENCE.	Felony or Misdemeanor.	Statute.
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....	Fine £100, or imp. h. l. for not more than 1 year	Sessions		
For life, or not less than 15 years	Or imp. h. l. for not more than 3 years	Assizes	Costs	
Same	Same	Assizes	Costs	
For 7 years........	....	Sessions	Costs	
For 7 years........	Or imp. h. l. for not more than 3 years	Sessions		
....	Fine, or imp. or both	Sessions		
....	Same	Sessions		

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....	Fine, or imp. or both	Sessions		
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Death	....	Same		
Same	....	Same		
Same	....	Same		
Same	....	Same		
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